

**THE BOARD OF VETERANS' APPEALS
AND APPEALS MANAGEMENT CENTER**

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

HOUSE OF REPRESENTATIVES

**SUBCOMMITTEE ON DISABILITY ASSISTANCE
AND MEMORIAL AFFAIRS**

ONE HUNDRED NINTH CONGRESS

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**OVERSIGHT HEARING ON THE BOARD OF
VETERANS' APPEALS AND APPEALS
MANAGEMENT CENTER**

Thursday, May 5, 2005

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND
MEMORIAL AFFAIRS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:30 a.m., in Room 334, Cannon House Office Building, Hon. Jeff Miller [Chairman of the Subcommittee] presiding.

Present: Representatives Miller, Berkley, Udall, Moran, and Evans.

OPENING STATEMENT OF CHAIRMAN MILLER

MR. MILLER. Good morning, everybody. We will call the hearing to order. The Ranking Member is on her way, as is Mr. Evans. But in view of the fact that we are at 10:30, a little bit past, I would like to go ahead and start the hearing to receive testimony on the policy and operational issues facing the Board of Veterans' Appeals and the Appeals Management Center.

There are some serious backlog issues, I think as everybody recognizes, at the Board and at the AMC. And I look forward to better understanding what the Department is doing and intends to do to make the appeals process more efficient for veterans and other beneficiaries.

When a claimant disagrees with a decision by a VA regional office or medical center, he or she has the right to appeal that decision. The number of appeals continues to increase, and unfortunately some claimants wait several years before a final decision is made on a claim. One purpose of our hearing this morning is to determine areas to shorten or shave off, if you will, time on those delays.

Among the questions I hope that we will address today: Is the system itself too cumbersome procedurally? Is additional staff going to solve the problem? As many of you are aware, this committee recommended in its fiscal year 2006 budget views and estimates an ad-

ditional \$6 million, for another 50 FTEs for the Board. Is the backlog a symptom of the way claims are being filed or claims filing behavior, and therefore resistant to any improvement efforts?

I am also interested in knowing how BVA and the AMC set performance goals and objectives, and how those goals may be met.

I welcome all of our witnesses who are here today. I look forward to your comments and suggestions for improving the accuracy and disposition times of appeals.

And I would like to recognize our Ranking Member, Ms. Berkley, for an opening statement.

OPENING STATEMENT OF HON. SHELLEY BERKLEY

Ms. Berkley. Thank you very much. I do want to thank the chairman, Chairman Miller, for holding this hearing to review the operations of the Board of Veterans' Appeals and the Appeals Management Center.

My Las Vegas office -- that's my congressional district -- is assisting -- we have many, many requests for help in this area. I have the fastest-growing veterans population, and there are a lot of outstanding claims out there.

We are currently assisting a Gulf War veteran who has numerous medical conditions and has been waiting for a decision on his appeal since 1999. This is six years that this veteran has had to wait to hear a yes or a no. I think veterans deserve to have their claims decided in a fair and consistent and timely manner.

Every claim that could be granted, in my opinion, should be granted. Denial of a claim should occur only after the facts have been fully developed and when the law doesn't support an award of benefits. I am also very concerned with the wide variation in decisions made by regional offices across the country that I understand takes place.

Data from the regional offices and the board suggest that the decisions made are highly accurate. However, this is inconsistent with my experience in my office and inconsistent with the low percentage of appeals which are upheld by the board and the court. Nevada has the third-highest reversal rate in the country, and that is a very big concern for me.

I hope today's witnesses will give us a better understanding of the rationale for the wide discrepancies. Too many veterans contact my office with concerns that reveal errors in their claims for benefits, and Committee staff during site visits to regional offices have found missed opportunities for the VA to award benefits.

I am also concerned about the number of remands which have been languishing in the system for years, and in some cases, although rare, decades. What actions can the VA take to identify cases which have been pending for an extraordinary period of time to thoroughly

review and finally resolve them?

There must be X number of cases that we just need to get off the table. Would it be possible for the VA to conduct a study of the hundred oldest claims pending remanded claims, and to provide the Committee with a summary of the problems which are identified as contributing to the delay?

It seems patently unfair and almost unconscionable that we are putting our veterans in this position. And if they don't deserve to have their claims taken care of, then let's get them off the table. If they do, let's grant them and get these veterans the help and the care that they need.

I hope that you are going to be able to answer my questions. I am sure you will. And I want to thank you, again, for being here. We appreciate your service. And I am most anxious to hear your testimony.

MR. MILLER. Mr. Evans.

MR. EVANS. I have no remarks, Mr. Chairman.

MR. MILLER. Mr. Udall?

OPENING STATEMENT OF HON. TOM UDALL

MR. UDALL. Thank you, Mr. Chairman. And thank you for holding this important hearing today on oversight of the Board of Veterans' Appeals and the Appeals Management Center. As all of my colleagues do, I have numerous constituents with complaints pending at the Board of Veterans' Appeals. The current average time it takes to have an appeal to claim adjudicated by the board is 2.7 years. I am sure the panelists here today will agree that this is totally unacceptable.

I appreciate the efforts the department has made in the past few years to streamline appeals decisions and remands. But clearly, more needs to be done. In looking ahead at Mr. Garvin's written testimony, I see a list of goals to improve the accuracy and timeliness of disability, pension, education, and other claims. I hope you will discuss in detail when you will achieve these goals.

This is extremely important to my veteran constituents and their families, who expect me not only to help them navigate through the red tape, but to cut it down when sensible. And I look forward to the testimony.

Thank you, Mr. Chairman. I yield back.

MR. MILLER. Thank you, Mr. Udall.

I would like to remind everybody that this hearing is being broadcast live via the Internet worldwide. And also, to the Members, you can go back and look in an archive section of our Committee website and actually access a recording of our prior Committee hearings as well.

So thank you to our first Committee witnesses at the table this morning. Members, I would like to introduce Mr. Ron Garvin, who is the Acting Chairman of the Board of Veterans' Appeals. He is accompanied today by Mr. Steven Keller, Senior Deputy Vice Chairman of the Board.

Mr. Garvin was named Acting Director of the Board in October of 2004, and was appointed by President Bush. Previously, he served as the Board's Vice Chairman. Following graduation from Dickinson School of Law in 1965, Mr. Garvin joined the Navy, and throughout his 26-year military career served as a prosecutor, a defense lawyer, trial and appellate judge.

The other witness on this panel is Mr. Michael Walcoff, Associate Deputy Under Secretary for Field Operations at the Veterans Benefits Administration. Mr. Walcoff is accompanied by Ms. Renée Szybala, Director of VA's Compensation and Pension Service, and Mr. Keith Wilson, Director of the Appeals Management Center.

Mr. Walcoff began his career at VA in 1974 as a veterans claims examiner at the Philadelphia Regional Office and Insurance Center. He received a B.A. from American University and a J.D. from Temple University School of Law. He is currently responsible for the 57 regional offices under the Veterans Benefit Administration, which has a workforce of 12,000.

We will hold our questions, each of us, until each of you has had an opportunity to testify.

Mr. Garvin, please begin.

**STATEMENTS OF RON GARVIN, ACTING CHAIRMAN,
BOARD OF VETERANS' APPEALS, ACCOMPANIED BY
STEVEN KELLER, SENIOR DEPUTY VICE CHAIRMAN,
BOARD OF VETERANS' APPEALS; AND MICHAEL
WALCOFF, ASSOCIATE DEPUTY UNDER SECRETARY
FOR FIELD OPERATIONS, VETERANS BENEFIT ADMIN-
ISTRATION, ACCOMPANIED BY RENÉE SZYBALA, DI-
RECTOR, COMPENSATION AND PENSION SERVICE,
VETERANS BENEFIT ADMINISTRATION, AND KEITH
WILSON, DIRECTOR, APPEALS MANAGEMENT CENTER**

STATEMENT OF RON GARVIN

MR. GARVIN. Good morning, Mr. Chairman. It is a pleasure to discuss the operations of the Board of Veterans' Appeals with you, the members of the Subcommittee, and your staff.

The Board's testimony before the Subcommittee on Benefits given in February of 1994 and June 1998 provide important background information.

In fiscal year 1994, the Board issued about 22,000 decisions. The

pending caseload stood at 47,000, and was on its way to 60,000. Our measure of timeliness then used, the average response time, was 781 days.

By fiscal year 1998, our timeliness had markedly improved, and our pending caseload was down to less than 30,000 cases. We issued 38,886 decisions, and we held 4,876 hearings. Appeals resolution time, the measure of time from the notice of disagreement until final decision on appeal, was 687 days.

I am proud to report that since 1998, we have consistently improved. In fiscal year 2004, the Board issued 38,371 decisions, almost as many as were issued in 1998, and we conducted 7,259 hearings, which is a substantial increase from 1998.

The appeals resolution time increased to 529 days. Our cycle time, the time that it actually takes the Board to issue a decision, excluding the time the case is with the service organization representative, was 98 days. Cases pending at the end of 2004 stood at 21,430. Significantly, we accomplished these results with 440 FTE. That is 43 less than we had in 1998.

These improvements over the past few years occurred in spite of several significant events, including the impact of the Veterans Claims Assistance Act of 2000 and the initiation and then the termination of the Board's evidence development due to a decision in the United States Court of Appeals for the Federal Circuit entitled *Disabled American Veterans v. Principi*.

We have received a lot of help in our success, including from the Congress, who has provided unqualified support for the appellate rights of veterans and their families; the veterans service organizations, who represent about 85 percent of the applicants; VA leadership, that supports improvements in the appeals process to ensure that veterans receive timely and quality decisions; and the staff of the Board, including the veterans law judges, counsel, and administrative support staff.

Through their efforts, productivity has increased over historical levels by 20 percent for staff counsel and 25 percent for veterans law judges. The number of hearings held has also increased, with video-conference hearings nearly doubling since 1998. Finally, the average number of decisions per employee has increased from nearly 50 in 1994 to 80.5 in 1998 and 87.3 in 2004.

Two of the most significant and persistent challenges we face are eliminating avoidable remands, and increasing productivity to contain and reduce the appellate backlog.

In regard to remands, we know that veterans want a timely and correct decision on claims for benefits. For the Board to do that, the record must contain all the evidence necessary to decide the claim and show that all necessary due process has been provided. If the record does not meet those requirements and the benefits sought can-

not be granted, a remand for further development is necessary.

Remands lengthen the appeals resolution time. One remand adds about a year to the process. Remands also divert resources from processing other claims and the appeals.

We are working with Van Breda, Office of General Counsel, and VHA to identify and track root causes of remands and provide training, and ultimately to eliminate avoidable remands. The results are already encouraging, with the remand rate for the first part fiscal 2005 dropping to 42.6 percent, as compared to 56.8 percent in 2004. For February and March of this year, the remand rate was even lower, 38.4 percent, and it is trending downward.

If nothing had been done, our backlog was projected to grow to unacceptable levels. The Board's backlog disposition time, the projected time it would take the Board, working at its current rate, to eliminate the backlog, would have increased from 170 days in 2004 to 391 days in 2006, and nearly 600 days by 2008.

Through incentives and sound management, we have beat our past projections, and we intend to do so this year. And we are going to do that by:

Eliminating avoidable remands by strengthening our intra-agency partnerships, that is, our joint training efforts with VBA, OGC, and VHA; by writing shorter, more concise decisions that are correct; by utilizing employee incentives, mentoring and training programs for all of our employees; by making use of overtime within existing resources; and by increasing our use of paralegals for non-decisional support activities.

We believe these measures will work to reduce the backlog and shorten the time it takes for a veteran to receive a well-reasoned Board decision. Already we have reduced the time it takes for an appeal to be finally resolved from 686 days in fiscal 1998 to 529 days in fiscal 2004. Our decision quality has improved from 88.8 percent in 1998 to 93 percent in 2004, and our cycle time is a little over three months.

In conclusion, we intend to continue working to develop new and creative solutions to the challenges we face in order to fulfill our statutory mission, to hold hearings, and provide timely, high quality decisions to our nation's veterans and their families.

I would be pleased to answer any questions for you or your colleagues, sir.

[The statement of Ron Garvin appears on p. 29]

MR. MILLER. Thank you very much. We will continue on with Mr. Walcoff.

STATEMENT OF MICHAEL WALCOFF

MR. WALCOFF. Chairman Miller, Members of the Subcommittee, thank you for providing me the opportunity to appear before you today to discuss the Department of Veterans Affairs' Appeals Management Center operations.

My statement today is divided into two parts. I will begin, as you have requested, by discussing VBA's AMC operation. Then I will briefly discuss the joint BVA/VBA remand reduction project.

The Appeals Management Center was created in July 2003 to manage remands by the Board of Veterans' Appeals. VBA determined that the best way to manage remand processing was to consolidate the responsibility to a single processing center where resources and expertise could be concentrated.

The AMC has complete authority to develop remands, reach decisions based on additional evidence gathered, and authorize the payment of benefits. If the AMC is unable to grant an appeal in full, the appeal is recertified to BVA for continuation of the appellate process.

The AMC began receiving work from BVA in July of 2003. The initial work coming to the AMC consisted of two types of cases. The first category of cases consisted of remands generated by BVA after July 2003. The second category was comprised of those cases that were pending in BVA's development unit at the time that the U.S. Court of Appeals for the Federal Circuit made its decision in *Disabled American Veterans v. Principi*.

Since BVA no longer had legal authority to initially consider any evidence it developed, the cases pending development actions were converted to remands by BVA between July 2003 and January 2004, and transferred to the AMC jurisdiction. There were 9,000 cases in this category.

VBA projected the volume of remand workload to be 13,000 remands per year. Based on this projection, the AMC was staffed with 87 employees. Due to a higher than expected remand receipt rate, the influx of 9,000 additional remands in the initial operating year, a strategy was developed to increase resources on a temporary basis to assist the AMC with claims decisions.

An additional 46 employees were temporarily assigned to accomplish AMC work, beginning October 2004. These employees are located at VBA's resource centers in St. Petersburg, Huntington, and Cleveland.

Since October 2004, the AMC inventory of pending remands has been reduced from 24,000 to 21,000. The goal is to reduce the pending inventory to 18,000 by the end of fiscal year 2005, and 12,000 by the end of fiscal year 2006. Once these goals are met, the additional resources assigned to the AMC will be redirected to compensation

claims at VBA's regional offices.

The AMC has enabled VBA to significantly improve the time it takes to complete a remand. During fiscal year 2003, regional offices took an average of 700 days to complete a remand. Currently, it takes the AMC an average of 400 days to complete a remand.

A strategic goal of 230 days, on average, has been established. This goal represents the minimum time needed to complete a remand, given the requirements of the Veterans Claims Assistance Act of 2000 and other legal requirements.

VBA does not require additional resources to reduce the number of remands pending. The high number and average age of pending remands are more closely related to procedures and due process requirements than to a lack of available resources.

Remands are unique in that they often require sequential development steps with requisite waiting periods between each step. The appeals resolution process is necessarily prolonged to ensure that all necessary evidence is obtained and considered.

Now I want to talk very briefly about the remand reduction project. In July 2004, the Deputy Secretary requested VBA and the Board of Veterans' Appeals to accomplish three tasks: one, to agree upon a reliable process for capturing information prospectively on reasons for remands; two, to conduct a retrospective analysis on a representative sample of remands to validate the agreed-upon tool; and third, to develop a plan for remedying the problem of avoidable remands.

On November 8, 2004, VBA and BVA submitted a report to the deputy secretary containing its planned remedial measures. VBA agreed to change claims procedures to more thoroughly document the record when attempts to secure federal records, such as Social Security records, failed, or attempts to identify PTSD stressors failed.

VBA also agreed to conduct additional field training on key areas such as VCA requirements and compliance, and obtaining Social Security records and disability decisions, medical examination and opinion issues, and certifying appeals to BVA.

The VBA/BVA team developed a new protocol to record reasons for remands. The protocol in use since November 2004 distinguishes between remands due to VBA error, remands based on BVA's authority to develop evidence in the absence of a VBA error, and unavoidable remands such as those resulting from changes in law.

These joint efforts are proving successful. The remand rate in fiscal year 2005 is 43 percent as of the end of March. This compares with the fiscal year 2004 remand rate of 56.8 percent. And for the month of March of 2005, the remand rate was 37 percent. Our goal is to reduce the remand rate to 30 percent.

In summary, VBA has increased its focus on the appellate workload over the past several years. Through our actions and the actions taken in collaboration with BVA, we have implemented measures to

reduce the number of remands and improve the timeliness of appeals processing. We believe we are moving in the right direction, and continuing efforts will allow us to significantly improve the appeals process for veterans.

Mr. Chairman, this concludes my statement. I will be happy to respond to any questions that you or other members of the subcommittee have.

[The statement of Michael Walcoff appears on p. 33]

Mr. MILLER. Thank you very much, Mr. Walcoff.

If I might ask a question or two, and then the other members will ask some questions.

First, Mr. Garvin, I think everybody has a copy of the Chairman's Report. Is this -- yes, this is it. In the report, you highlighted a 180 percent increase in new appeals between fiscal years 2001 and 2004.

And my question is: To what do you attribute that drastic increase?

Mr. GARVIN. One of the increases was a period of time after the VCAA when the appeals sent to the Board from the field were interrupted as we worked out the Department's processes on how to handle those VCAA appeals there in the year 2002.

Mr. KELLER. 2001.

Mr. GARVIN. 2001 and 2002. The pipeline essentially was dried up. So for that period of time, there was a lull in the number of appeals coming up. But since we have gotten back to normal processing, we are at the more predictable and higher rate.

Mr. MILLER. You said there was a lull, and you said there was a cessation because you were trying to figure out how to work through the transition. But I am concerned about the 180 percent increase. A lull to me says there is a decrease, but I don't guess I am following your response.

Mr. KELLER. Well, there was a period of --

Mr. GARVIN. Mr. Keller will address that.

Mr. KELLER. I am sorry. Yes. I was there at the time before Mr. Garvin became the Vice Chairman. There was a period of time following the enactment of the Veterans Claims Assistance Act during which the regional offices had the option of reworking 100,000 appeals, of claims that had been previously denied because they were not well grounded.

And they did so. That diverted resources from doing new appeals to rework those that had been previously denied and which would not have been denied under the VCAA.

As a result, that consumed their energies. The appeals new appeals were not sent to the Board in the quantities they had been before and have been since.

So there was that hiatus in the receipt of appeals by the Board dur-

ing that year, year and a half period. So our receipts dropped and our productivity accordingly dropped during that period of time. Since that time, those appeals have been worked and regional office productivity on new appeals has increased even beyond the levels they were at before the VCAA. So that is sort of a blip in the productivity.

MR. MILLER. Well, let's try this one. What are the most common errors or reasons for a 56 percent remand rate on disability compensation decisions? Why are we getting -- it appears to me 56 percent of those that are being sent up are remanded back. What are the reasons for that?

MR. GARVIN. Well, the primary reason or the one most frequently cited in the remands was compliance with the VCAA. Even though we reworked that large group of cases that were in the field, it took us -- it has taken us much too long to figure out how to do it correctly. So there is an awful lot of those remands that were sent back for the procedural compliance requirement.

After that, the second most frequent reason has to do with physical examinations, whether they be complete enough, whether there is a nexus opinion, or whether they are just stale by the time we receive them at the Board for final decision.

MR. MILLER. Can you walk us through just a typical appeal? I mean, I know there is no such thing as a typical appeal. But kind of explain to the Committee Members what happens and, you know, what information is sent up, requested.

You know, I think all of us have constituents call our office and they are just totally exasperated with the system in one way or another. And, you know, the length of time and -- can you just kind of give us an idea of how it works?

MR. GARVIN. Yes, sir. When the appeal is received at the Board, it is initially docketed -- has been docketed in the field. When we receive it, it goes into the general population of cases pending before the Board.

Now, by statute, we have to decide the cases at the Board in accordance with docket order number. So therefore, the oldest cases coming in receive the initial attention of the judges.

MR. MILLER. Can I ask you a question? Is there a statutory requirement for time that they must be adjudicated?

MR. GARVIN. Other than the oldest docket number first, no. So we work from the oldest ones forward. And it depends on the -- as you may or may not know, we are divided into four decision teams. And we try to stay very close to docket order number, but we also have a slight balance by the geographic jurisdiction of each of the four teams.

Once that case is taken out of the general population or storage area and begun to work, the case is then sent to the service representative, if there is one, so that they can examine the case, case file,

and present any additional evidence or argument that they have on the case.

After they have completed their examination of the file, it is returned and distributed by our central staff to the decision teams, where the judges will have an attorney, one of the staff attorneys, look at the file, draft a decision, and present the draft decision to the judge for either signature or returned for additional work.

At that point, if the judge signs off on it as being an acceptable product, then we process it for distribution to the applicant.

MR. MILLER. Is it true that you are working on docket numbers in 2003 now?

MR. GARVIN. I believe that is correct, yes.

MR. KELLER. Late 2003 and early 2004, in that range.

MR. MILLER. Okay. Ms. Berkley?

MS. BERKLEY. Thank you, Mr. Chairman. I know that you have got a lot on your plate, and I know that it is not an easy task that we have tasked you with. I think it is important to keep in mind that even though we pressure you for getting these cases expedited and getting them done in a timely manner, there is also an issue of getting them done right the first time.

And I am very concerned about the lack of appropriate number of staff in order to do your job right. If I am not mistaken, it seems that the information I got is the time taken by the Board is going to increase by 170 days at the end of 2004, and I think your testimony said to 391 days by the end of 2006, and then up to 600 and some odd days, I think, perhaps two years later or a year later.

Do you have -- in your opinion, do you have the adequate personnel to do the job that you have been tasked with?

MR. GARVIN. We think we are going to be able to reduce those figures substantially. Those figures, as we put in our annual report, indicate that these are the progressions if we do nothing unusual to attack the backlog.

One of the things that we are counting on for that purpose is the avoidable remand project that we are undergoing now.

MS. BERKLEY. Yes. That was one of my later questions. But as long as you brought it up, you mentioned eliminating avoidable remands. How do you eliminate avoidable remands?

MR. GARVIN. We are making a greater effort to look at, number one, the VCAA compliance; number two, the adequacy of the most frequently cited reasons for remand, and that is the medical examinations.

We are taking a much closer look at them. And we are working, quite frankly, on issues, along with the VBA, so we can identify the weaknesses in the system. And as we are trying to do better decisions on rationalization as to whether or not the procedure, VCAA procedure, is adequate, we are also looking more carefully at the doc-

umentation for the medical examinations, including the supporting documentation, which we may not have been giving as close a scrutiny in the past as we should have. And we are concentrating on that as we try to improve our decisions.

MS. BERKLEY. So in other words, those of us that have been working very hard to get more money in the budget for you to get more staff, we should stop doing that?

[Laughter.]

MR. GARVIN. I would never refuse any help, ma'am. But I am not asking for it.

MS. BERKLEY. I see. All right. Let me ask you a question. And you brought this up also, so it segues into another question that I had. I think one of the things you said that you were working on to eliminate the avoidable remands was medical examinations or medical opinions.

Let me ask you a question. We have a case right now that I guess they approached the Committee. And it was a veteran, and I am going to read this because this is what I have, but a veteran whose claim for service-connection of a seizure disorder and other disabilities related to head injuries filed his appeal in 2000.

He recently contacted the Committee. The veteran was currently service-connected at zero percent for several scars, including two scars potentially related to the head injuries claim. And then after the claim was remanded to the AMC, a medical evaluation was conducted which did not provide a basis for service-connection.

However, apparently the head injury scars were not considered as part of that evaluation, because the remand order did not require it. And it seems to me if somebody has got scars on the head and they are saying that they have got head injuries and that is why they are appealing their claim, that somebody should have picked this up and directed that the medical examination included looking at the scars for the head injury.

Is that what you are talking about correcting?

MR. GARVIN. That is part of it. We went through a period in our remands where we did not specify the precise medical corrections that we were looking for, the additional medical evidence that we were looking for. And that is one of the areas which we have worked together with VBA to improve upon.

We are now asking our judges to become more specific in their remands, rather than saying, would you look at the head.

MS. BERKLEY. Let me ask you a question. I realize this is only six months old, and I guess in government standards, that is not a lot of time unless you are waiting on the other end for a decision.

But December 29, 2004, in the Staley decision, the court said, ``Of

significant concern to the court is VA's admission that there are currently no written standard operating procedures regarding the date stamping and mailing of Board decisions."

What actions have been taken in the last six months to address the Board's concerns?

MR. GARVIN. I am going to have Mr. Keller address that one.

MR. KELLER. We now have written procedures in place regarding the mailing of our decisions. We are examining that entire process to make sure we can document for the record when the case was sent and to whom and at what address it was sent.

So we took that decision quite seriously. We now have procedures in place for our administrative service. And we should have what we call a Chairman's Memorandum, which sets forth our internal operating procedures regarding dispatch of decisions. We think we have come a long way to address the court's concerns.

MS. BERKLEY. Okay. Good. I have a number of questions, but the Chairman is admonishing me that there are others that need to speak. Well, in a nice way. It wasn't a hard admonishment. It was just get on with it. Let me ask you one more question on the record. And if you don't mind, I would like to submit some questions to you.

In my opening statement, I talked about the possibility of finding the hundred oldest? The claims they have been in the system for an awful amount of time, decades in some instances.

Is there any possibility of bringing those to light and adjudicating those first? You said that they were -- you know, they went by order of date. But how are some of these lasting decades, and what do we do to resolve them?

MR. GARVIN. Let me first give you some preliminary, and then I am going to turn it over to Mr. Walcoff. Yes, we do, I think, cooperatively look for the very old decisions.

When our travel boards visit each of the ROs, that is one of the areas in which we attempt to provide assistance to the ROs. If they have those cases which have been in the field for quite a long time, we will offer and in most instances are able to help look at those cases.

MR. WALCOFF. I don't see any reason why we couldn't give you -- do the research that you are requesting and provide that information for you. I would be very willing to do that.

[This information is provided on p. 86.]

MS. BERKLEY. And I am hesitant to take any more of your time and resources to do this when you need to be doing your jobs. But perhaps it would be instructive for all of us and we can just get these cases dealt with because I am convinced that every veteran in the United States is moving to Las Vegas, Nevada and I am going to have to deal with all these cases eventually. So the sooner I can get them off the table, the easier my staff's job is going to be.

So I thank you very much, and I am going to submit a list of other

questions, if you don't mind. I would appreciate a response. And thank you for being here.

MR. WALCOFF. Thank you.

MR. MILLER. I would also like somebody to research why all the veterans are moving to Las Vegas.

[Laughter.]

MR. MILLER. Mr. Moran -- no, no, no, no, no. I would like to go to Mr. Moran before we go to Mr. Udall. Mr. Moran.

MR. MORAN. Thank you very much, Mr. Chairman. Thank you and Ms. Berkley for conducting this hearing. It is a topic that we hear about regularly from our constituents.

Mr. Walcott, it is my understanding that it is taking about 400 days for the Appeals Management Center to complete a remand. You indicated in your testimony that you have a goal of 230 days. That is an admirable goal, I guess, although it still seems like 230 days is a long time.

What is the time frame for you to reach that goal? And kind of more importantly, not just what your goal is, but how do you get there? What is it that is going to allow you to get from 400 days to 230 days, and then what are we going to do to get that time frame even shorter?

MR. WALCOFF. I think part of the reason why we are at 400 days right now has to do with the way the work initially came in to the AMC. In a short period of time, not only did we get work coming in as it would normally come in from BVA, but we also got that large block of cases that had been in the development unit. 9,000 cases basically came into the AMC over a very short period of time.

And we had to develop a way to do the initial development on all those cases, and then be able to deal with them as the evidence started coming back. And that is the reason why we have added resources and that sort of thing.

But to handle that big block of cases that are all at about the same stage is taking us longer than it would if we just had the normal flow. So one of the things that we are anticipating is as we get through that big clump of cases and get them all resolved, that the system is set that we have enough personnel that we would be able to resolve these remands in as expeditious a manner as we can that is allowed by the law.

I would ask Mr. Wilson to explain to you about the 230 days because that was my reaction also when he first talked to me about what standard we want to set for that. So Keith, why don't you explain why we settled on 230 days.

MR. WILSON. Sure. Good afternoon. 230 days is a goal that was established largely based on the requirements of the VCAA, the Vet-

erans Claims Assistance Act. When we go out and ask for evidence from a veteran, from a doctor, from the Federal Government, we are required to wait a certain period of time, and that is 60 days, at each of those stages. So we have a 60-day window that we allow the respondent to provide us the information in.

In addition to that, most of the remands that we see are sequential in nature. In other words, we are required to take the first step on the remand. Once that step is completed, we move to the next step. So we can oftentimes see two or three situations where we have a 60-day window where we are waiting for evidence.

In addition to that, at the end of the remand process, if we are not able to grant the benefit in full, then we will issue a supplemental statement of the case to the appellant. And they have a 60-day window to review that information and provide any additional comments that they want to provide prior to us recertifying the case back to BVA.

So we have several windows that we are required to wait for certain periods. In between those windows, we establish ten-day turn-arounds to move it from one stage to the next once we are able to complete the previous stage.

MR. MORAN. Statutorily, what you are telling me is that statutorily, the veteran has a 60-day period of time in which to respond kind of each step of the way?

MR. WILSON. That is correct.

MR. MORAN. And is there any reward for a veteran who takes less than the 60 days? If the veteran responds to you in ten days or a month, does that speed up the process, or that 60-day period is still open?

MR. WILSON. It does speed up the process. The faster we can get the claim to a decision-maker, the better off the veteran is. So certainly, when we send out our initial letter to the veteran telling them who we are, what we are doing, we encourage them to get the information to us as quickly as possible.

MR. MORAN. In other words, the 60 days is not an excuse used by the VA to delay putting the file in the process, having the adjudication occur?

MR. WILSON. No.

MR. MORAN. As long as you have the information, that file is going to proceed?

MR. WILSON. That is correct.

MR. MORAN. Okay. Is this a long-time problem? My experience in Congress now is about ten years. This has been an issue since I came to Congress and have been a member of the Veterans Affairs Committee. Is this a historic problem at the VA, or is the problem getting exacerbated over time, the problem being the amount of time?

MR. WALCOFF. What I would say to you is that certainly the VCAA

law -- we know how long that has been around; it has been around since 2000, 2001. So I am not going to say to you that before that, everything was -- we were doing everything, you know, in a timely manner.

But I do believe it has added on to the time. It was not necessarily what we wanted to begin with, but it certainly has made it worse, is what I would answer to that.

MR. MORAN. The chairman is probably more lenient with the ranking member than he will be with me, and that red light came on. But let me ask this question: Is there any statutory changes -- I have not read your testimony, and maybe you have made some suggestions -- but is there anything that you see as an impediment, that Congress needs to change the law that keeps you from doing your job in a more timely fashion?

MR. WALCOFF. I am going to ask Ms. Szybala to answer that. She is the -- as the head of C&P service, she is responsible for policy in this area. And there certainly have been discussions about this.

MR. MORAN. Thank you, Mr. Secretary.

MS. SZYBALA. We have reviewed -- VA has reviewed and Congress has reviewed the appeals process several times. I know of three off-hand. The secretary has reviewed it more recently, as has the under secretary.

Basically, all the reviews come out with some consistent recommendations. One is to close the record. This is a particularly difficult one, very hard to get your hands around to do it right, to do it in a way that is fair to the veteran. So that is not going to happen any time soon, but it is certainly something we are considering.

All the recommendations that have come to us from these committees and commissions and task forces are still on the table. One is -- a lot of them are regulatory.

The 60 days, the 60 days for the VCAA response, is not statutory. It is not statutory. It is not in the VCAA. But it is VA policy, and it is in our manual, and it is in our VCAA letters. We give them 60 days. We need to study that. We need to study whether that is the right amount of time, whether that is the amount of time that veterans need.

Under the VCAA, they have an hour -- I am sorry -- they have a year in any case. So this is just the time we have to wait before we can move further. They will still have the year, and they can always give us more evidence within that time.

Things like that are under consideration. We are looking at changes in the DRO process. The DRO is the decision review officer, which is a part of the VA side of the appeals process. We are looking at whether changes need to be made there which can help speed it along.

So I don't really have suggestions for statutory changes for the appeals process right now. We will be back to you when we think of any.

Closing the record would take some statutory changes.

MR. MORAN. Thank you, Mr. Chairman.

MR. MILLER. Thank you very much. Let the record show Mr. Moran went two minutes and 16 seconds over for next.

Mr. Udall.

MR. UDALL. Thank you, Mr. Chairman. I will try to stay within my time here, since you are keeping track here.

Could you talk a little bit about -- I want to go to that last question. When you talk about closing the record, could you talk a little bit about what you are talking about and what kind of statutory changes we might be looking at? I know you are saying you don't want to recommend it right now. But could you do that a little bit?

MS. SZYBALA. Well, one of the recommendations that makes most sense to me would be to close the record at the point in time that the case goes to the Board, when the Form 9 is filed, when the case has been certified to the Board, or when the Form 8 is filed and the case has been sent to the Board.

At that point, it is in appellate status, true appellate status, no longer at the RO. And anything new that the veteran gives the Board beyond the things that the Board is allowed to look at -- the hearing that the Board holds or new medical exam -- anything else that the veteran gives new has to be remanded to the RO.

And this causes a constant cycle. If veterans knew, and their providers, their VSOs, knew, that they needed to get all their evidence in at the point in time that they certify their appeal to the Board, I think we would have less problem there.

The veteran could still give that evidence in to the RO. It would just be looked at in a different claim, and the claim that they appealed to the Board would go forward. That is the kind of closing the record that makes most sense to me.

There are certainly other ways to look at it. Another way is to make the Board appellate only, so that the Board actually only reviews the correctness of an RO decision. It doesn't have difference of opinion kind of authority. It is not looking at de novo.

That also would mean the Board is not taking new evidence, but it would be more of a sea change in what we use the Board for, what the Board is able to do now.

MR. WALCOFF. Renée, let me interrupt for one second. This issue of evidence that comes in after the case has been certified to the Board is an interesting one because this is part of the reason why we always react a little bit when people look at remands and have them as being comparable to errors.

Very often we will certify a case to the Board and new evidence comes in, and that is what causes the Board to remand the case. There is nothing that the RO did that is at fault. It is just that new evidence has come in, and the system allows that evidence to be con-

sidered by the Board.

And it is the same thing with grants. Just because the BVA grants a case that we had denied doesn't necessarily mean that the RO had made a mistake. It might be that new evidence came in that has changed what they are looking at. So this is part of the overall process that makes it so complex.

MR. UDALL. And in your analysis, do you think it is more efficient to do it the way you are doing it, where you don't close the record? I mean, mean -- you know, I am familiar with legal cases. I mean, clearly you close the record in the appeals and the appellate courts. You close the record. There isn't any new evidence. There isn't this issue of something surfacing that is new, and then remanding it back and redoing it.

Have you looked at whether or not this is an efficient way of doing it like this? Or would it be more efficient to close it, deal with that case, and then -- and as you say, deal with a future case or something along that line?

MR. WALCOFF. I mean, you really could always take the new evidence as a new claim.

MR. UDALL. Right. As a new claim.

MR. WALCOFF. But to answer your question, I am not -- you know, is it more efficient? It depends upon how you define efficient. You know, I think that when we decide anything that we would do in this area, we obviously have to be very sure that we are looking at what is fair to the veteran, you know, and certainly approach it from that aspect as well as the "efficiency" aspect.

And I don't know where that balance is at this point. And that is something that if we are going to look at, we have got to really look at it with an idea of making sure that we maintain that fairness.

MR. UDALL. Well, when you say is it fair to the veteran and talk about efficiency, I mean, what I am talking about is getting them as quick a resolution as is reasonably possible on their issue.

And so if this new evidence that comes in is directly related and you can handle it much quicker in a remand than you can starting an entirely new case, obviously the way you are handling it is totally acceptable. But if it is delaying it with this bouncing back and forth, then I think we need to take a look at it in terms of closing the record.

This closing the record has been in place for a long time, I guess. Right? And it is probably -- not closing the record. But it has been there for the benefit of the veteran, I am sure.

MR. WALCOFF. Correct.

MR. UDALL. That is why you all keep the record open, so that they can submit anything at any point.

MR. WALCOFF. That is right.

MR. UDALL. Yes. So it would be a big issue in terms of changing that

and closing it out and opening new cases. Thank you for enlightening me and the Committee there.

MR. MILLER. Thank you, Mr. Udall. Thank you, members, for your questions. And again, some members will be submitting written questions for your response. We thank you for being with us today, and we'd like to excuse you and ask the other witnesses to come forward.

We are going to have a vote called in just a few minutes. But I would like to go ahead and see if we can move forward as expeditiously as possible.

Thank you very much. If I might introduce Cynthia Bascetta, Director of Education, Workforce, and Income Security at the Government Accountability Office. She is accompanied by Ms. Irene Chu, the Assistant Director of that same department.

Ms. Bascetta joined GAO in 1983, and since 1998 has directed their reviews of the effectiveness and efficiency of VA's health care and disability compensation programs. She has also led GAO's work on the Social Security Administration's disability programs. Her work over the years has helped lay the foundation for bipartisan legislation to improve disability compensation programs for both VA and the Social Security Administration.

You may begin, Ms. Bascetta. Thank you.

**STATEMENT OF CYNTHIA BASCETTA, DIRECTOR,
EDUCATION, WORKFORCE, AND INCOME SECURITY,
GOVERNMENT ACCOUNTABILITY OFFICE, ACCOMPANIED BY IRENE CHU, ASSISTANT DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY**

MS. BASCETTA. Thank you, Mr. Chairman.

I appreciate the opportunity to be here today to provide an update of our 2002 review of the Board's quality assurance system. In that review, we found that the Board needed to correct weaknesses in how it selected decisions for quality review and how it calculated the accuracy rates of these decisions.

Based on our analysis of information we reviewed in April this year, we determined that the Board has taken action to significantly strengthen its quality review system. I will focus my remarks today on the three areas in which we recommended improvements.

First, we found in 2002 that the Board's sample size was adequate for estimating its accuracy rate. But we pointed out some Board practices that might result in misleading accuracy rates.

In particular, we found that the Board was not ensuring that decisions made near the end of the fiscal year were sampled or that quality review results were being properly weighted in the formula used to calculate their accuracy rates.

But in 2002, the Board agreed to correct these practices, and our updated work shows that in fact the Board did take corrective action in fiscal year 2002 to ensure that the decisions made near the end of the year are also sampled.

We also found that the Board had not revised its formula for calculating accuracy rates in order to properly weight the quality review results for original decisions made by veterans law judges versus the results for decisions made on cases that the court had remanded to the Board for rework.

At the same time, the Board's reported accuracy rate of 93 percent for fiscal year 2004 would not have been materially different even if the Board had corrected this methodological error. Nevertheless, corrective action needs to be taken to avoid the potential for reporting a misleading rate in the future, and the Board has agreed to correct this issue in the very near future.

Secondly, our 2002 review reported that the Board included non-substantive deficiencies in calculating its reported accuracy rates. These deficiencies would not be expected to result in either a remand or a reversal by the court.

We concluded that the reported accuracy rates would have been higher if the Board counted only substantive deficiencies in its accuracy rate calculation. In fact, VBA had stopped counting nonsubstantive deficiencies after the VA claims processing task force found in 2001 that mixing serious errors with less significant deficiencies could obscure what is of real concern.

Similarly, we recommended that the Board's accuracy rates take into account only those deficiencies that would be expected to result in a reversal or a remand by the court. In fiscal year 2002, the Board implemented this recommendation.

Third, we brought to the Board's attention two standards that government agencies should meet: the internal control standard for separation of key duties, and the performance audit standard calling for organizational independence for agency employees who review and evaluate program performance. The Board had not met these standards because certain veterans law judges, who were directly involved in deciding veterans' appeals, were also involved in reviewing the accuracy of those decisions. The Board took prompt action to correct these problems in 2002 while our review was still ongoing.

While our update shows much improvement in the Board's quality assurance process, I would like to take this opportunity to say a few words about another key measure, that is, the consistency of disability decisions.

Our 2002 report highlighted the fact that adjudicator judgment is inherent in the disability decision-making process. As a result, we recommended that VA systematically assess consistency within VA as a whole, including decisions made by the Board and those made by

the VA's 57 regional offices.

VA still lacks such a system, but VBA and the Office of the Inspector General have recently begun reviews to try to explain the wide variations from state to state in average compensation payments per veteran.

We continue to believe that in addition to making improvements in accuracy, VA must have a better understanding of consistency to provide reasonable assurance that veterans' cases are decided fairly and equitably.

I would be happy to answer any questions that you or the other subcommittee members might have.

[The statement of Cynthia Bascetta appears on p. 39]

MR. MILLER. Thank you very much. I don't have a question, just a statement. I just want to say thank you for your agency's work over the years. The information that you have been able to provide to the staff has been extremely valuable to assist them in doing their jobs, and I just want to personally say thank you for what you have been doing.

And I would like to defer to the other members who are here. Ms. Berkley?

MS. BERKLEY. Okay. The Chairman tells me we are going to have a vote called any moment. But perhaps in your testimony you have already addressed this, but let me make sure that I understand.

Thank you very much for being here and for your report. You have found that since 2002, VBA has improved the sampling process for quality and improved the organizational independence of quality reviewers. But you do remain concerned about the lack of consistency in adjudication throughout the VA and appellate review.

Do you think that the high number of remands and reversals related -- are the high number of remands and reversals related to the lack of consistency in decision-making?

MS. BASCETTA. I can address that in two ways. First of all, there are two sets of remands. There are the remands that the court would send back to the Board. We have not studied that part of the process. There are also the remands that the Board sends back to the initial decision-makers, and in that regard, as you have heard from the previous panel, it is a very complicated process.

You know, the second review, the Board review, is a de-novo process which gives veterans the opportunity, a chance to have their case heard afresh. And I think the most important comment that I would make on a conceptual level is that there is a significant amount of adjudicator judgment in many of the cases. And for that reason, we don't expect 100 percent consistency.

What we are asking VA and other agencies, particularly the Social

Security Administration, to do -- because they all face this same problem -- is to have a measure for what is a tolerable level of variability. Without that, it is hard to know what the remand rates, or the reversal rates, for that matter, really mean.

MS. BERKLEY. Okay. Thank you. One other question, if I could.

GAO's recommendation to count only deficiencies which would be likely to result in a reversal or remand from the court, can you explain why there is such a high remand rate from the court if the quality of Board decisions is as high as the 93 percent accuracy rate reported?

MS. BASCETTA. Well, again, accuracy -- the accuracy rate at the Board is computed under a system in which the reviewer does not have the opportunity to substitute their judgment for the decision that was made.

Once it goes to the court, though, there is the opportunity to do exactly that, to interpret evidence differently. And again, it is hard to know, you know, whether that 58 percent remand rate is reasonable or not without knowing, you know, more about the actual bases for those remands.

But a good part of it could be explained by a difference in judgment.

MS. BERKLEY. Okay. Thank you very much.

MR. MILLER. Mr. Moran?

MR. MORAN. I have no questions, Mr. Chairman.

MR. MILLER. Thank you very much, Ms. Bascetta and Ms. Chu. Thank you for being with us.

MS. BASCETTA. Thank you.

MR. MILLER. We would like to go ahead and call the next witnesses forward, and we will see if we can move this through before we have to leave for a vote. I will introduce you as you are getting set up.

Mr. Robert Chisholm is the past president of the National Organization of Veterans Advocates. Since 1991, he has been representing veterans before the VA and the Court of Appeals for Veterans Claims. He also has appeared before the United States Court of Appeals for the Federal Circuit.

In 1998, he was elected to serve as the president of National Organization of Veterans Advocates, and served in that position until 2004.

Mr. Rick Surratt is the Deputy National Legislative Director of the Disabled American Veterans. He began his career with them as a national service officer in 1976. In 1998, he was named to his current position.

Mr. Surratt enlisted in the U.S. Army in 1966 and was wounded during combat field operations in Vietnam. He was honorably discharged from the Army in 1969.

Mr. Chisholm, Mr. Surratt, we appreciate you being here with us

today. And Mr. Chisholm, would you please begin your testimony.

STATEMENTS OF ROBERT V. CHISHOLM, PAST PRESIDENT, NATIONAL ORGANIZATION OF VETERANS ADVOCATES; AND RICK SURRATT, DEPUTY NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

STATEMENT OF ROBERT V. CHISHOLM

MR. CHISHOLM. Thank you, Mr. Chairman and members of the subcommittee. And thank you for the opportunity to present the views of the National Organization of Veterans Advocates on operations of the Board of Veterans' Appeals and the AMC.

As attorneys representing veterans in this system, we don't really have much experience with the AMC because any veteran that is represented by counsel immediately bypasses the AMC and goes straight back to the regional office. So my comments today will be directed mainly about the Board of Veterans' Appeals.

A claimant who files a new claim for benefits that is denied by the VA usually faces whether from a three- to five-year horizon before he or she receives a final decision from the Board of Veterans' Appeals.

If that same claimant then appeals the case to the Court of Appeals for Veterans Claims, it may take another 12 to 18 months for the court to render a final decision. And when the court acts in the claimant's favor, what that usually means is the case is remanded or sent back to the Board of Veterans' Appeals for a new decision.

The remand from the Court of Appeals for Veterans Claims provides the claimant with the opportunity to submit additional evidence and arguments in favor of the claim at issue. And it preserves the claimant's favorable effective date if there is in fact an award of benefits.

The problem, however, is that many claimants that I and members of NOVA represent do not survive, literally survive, this protracted adjudicatory process. Those claimants that do survive are subjected to interminable delays before the VA.

I would like to focus my attention first on the issue of remanded claims from the Court to the Board and from the Board to the regional office. In 1994, Congress enacted the Veterans Benefits Improvement Act, which provided that remanded claims should be treated expeditiously. The intent behind the VBIA and the subsequent statutory codification is clear. Congress wants those claims handled quickly.

You heard earlier Mr. Garvin testify about the docketing of BVA appeals. And this is an area that is of grave concern to me because when a veteran's claim comes up the ladder and is assigned, say, a 1999 docket number, and then it goes to court and is then remanded

back, it should retain that 1999 docket number.

And let's assume, further, that the board then remands the case to the regional office, and let's say it is an issue of service connection for a mental disorder and the veteran then gets an award of benefits, but it is less than the full amount of what that veteran was seeking. Let's say he only gets a 50 percent award and wants a 100 percent award.

Well, when that veteran appeals back to the Board to try and get that 100 percent, typically that veteran is not receiving the 1999 docket number, in my experience. We have had to file -- by "we," I mean myself and other members of NOVA -- have had to file writs of mandamus to compel the BVA to assign the proper docket number.

Just yesterday I checked on two cases, one of which I filed a writ at the regional office to compel expeditious treatment went to court and I was told I would get -- the client would get expeditious treatment. And then when it went to the Board, it was assigned a 2005 docket number in a case that should have been assigned a 2000 docket number.

This happens all too frequently, unfortunately. And I would submit that the claims being remanded from court to the Board, going down to the RO, and coming back are not receiving the expeditious treatment they are entitled to and that Congress desired.

Another concern I have is the way that the Board provides statistical tabulations to Congress. Every year in the BVA chairman's report, the total number of decisions made are reported, the number of allowed claims are reported, and the number of remanded claims are reported, and the number of denied claims are reported.

One of the problems here is that if a veteran has multiple issues before him, and one of those claims is allowed but the rest are denied, in that situation typically the BVA only reports the allowed claim and not the denied claims. And this becomes a very serious problem.

Finally, I would like to say the quality of decision-making at the Board is very problematic when viewed through the lens of how many cases are being remanded by the Court of Appeals for Veterans Claims. Over 65 to 70 percent of the cases that reach a merit determination at the Court of Appeals for Veterans Claims are being remanded due to a lot of the errors that we have already heard testimony about this morning.

My final thought is that veterans should be allowed the choice to have an attorney represent them earlier in the process if they choose. Presently, veterans are prohibited from hiring and compensating an attorney until after the record is closed at the Board of Veterans' Appeals, and only on appeal to the Court of Appeals for Veterans Claims.

I would submit that Congress should seriously consider a statutory amendment to 38 USC 5904 to permit veterans the opportunity or the choice to hire an attorney at the initial stages of their claim.

Thank you, and I will take any questions that you have.

[The statement of Robert V. Chisholm appears on p. 57]

MR. MILLER. Mr. Surratt, if you would please continue. And we are going to try and stay through the -- we have 17 to 20 minutes to get over to vote. So please continue.

STATEMENT OF RICK SURRATT

MR. SURRATT. Thank you, Mr. Chairman.

The best evidence of the importance of a fair and effective appeals process for veterans is the large number of VA decisions that are overturned on appeal. In fiscal year 2004, claimants initiated nearly 109,000 new appeals.

Experience has shown that approximately half of these appeals will be resolved by the VA office that made the decision being appealed without the necessity for review by VA's Board of Veterans' Appeals.

Of the 38,371 cases in which there was a BVA decision last year, 17.1 percent were allowed. Another 56.8 percent involved some processing omission that rendered the claims decision unsustainable, thereby requiring remand from the Board to the VA activity responsible for the original decision. Together, the allowed and remanded cases comprised 73.9 percent of the board's total decisions in 2004.

Again, based on experience, approximately 25 percent of the remanded cases, or 14 percent of the total cases reviewed by BVA, will be allowed on remand. Of the 75 percent of the remanded appeals that will be returned to the Board, approximately another 10 percent, or 4 percent of the total cases reviewed by BVA, will be allowed.

Based on these percentages, we can project that somewhere in the neighborhood of 13,500 of the claimants whose cases were reviewed by the Board last year will eventually receive the benefits they would have otherwise been deprived of erroneously. That does not include close to half of the nearly 109,000 applicants whose claims will be favorably resolved without review by BVA.

Those numbers demonstrate not only the necessity of the appeals process, but also that VA's appeals process is fulfilling its purpose, to ensure veterans receive the benefits they are due.

In any adjudication system, mistakes are inevitable. In an adjudication system as massive as VA's, the claims wrongly decided will be relatively numerous under the best of circumstances.

However, the unusually large percentage of appeal cases in which errors are found demonstrates serious problems in the initial decision-making process. In addition, repeated errors at the field office level result in multiple remands and multiple Board decisions in far too many cases.

Erroneous or defective decisions result in several adverse consequences. Erroneous denials deprive large numbers of veterans the benefits they are rightly due, and delay the delivery of these benefits for protracted periods.

Because erroneous denials necessitate multiple decisions, they add substantially to the workload at all levels of adjudication. Greater workloads require greater resources. If the increased workloads are not matched by increased resources, quality must yield to quantity, leading to even higher error rates and a vicious cycle of increasing inefficiency. Consequent claims backlogs delay the delivery of benefits for all claimants. Everyone suffers.

And I am going to take just a moment to say that though there is room for improvement at BVA and the Appeals Management Center, their problems are secondary to the more critical problems in the initial decision-making process.

To give you an example, VBA management has tolerated for years problems such as that at the New York City Regional Office where, on average, an appeal languishes for nearly five and a half years before the regional office transfers it to the Board for a decision; or Montgomery, Alabama, which had a 66 percent remand rate in 2004.

Many of these appellants are elderly, or many of them are very seriously disabled, and they need the benefits in a more timely fashion than that.

I want to address the issue of closing the record. It seriously concerns me when VA officials raise suggestions of that nature. First of all, you heard that the most frequent reason for a remand is an inadequate exam. And I think one of the VA officials said that the case has to go back to the RO if the veteran submits some new evidence. Well, that is not entirely true. The veteran can waive that right. And usually the case goes back to the AMC, not the RO.

But VA has the option to get new evidence any time during the appeals process. It can get independent medical opinions. It goes to VHA for opinions. It can remand to the AMC to get an opinion. I think it would be very unfair to close the record and not let the veteran enter new evidence.

Beyond that, I think it would be very inefficient. If you have a decision before you, it would be more efficient to have every piece of evidence you can get up to the point that you start writing the decision to make the best decision you can make one time, rather than send it back and adjudicate the case piecemeal.

Moreover, many times during the pendency of the appeal, more evidence comes in as it is being made -- veterans being rehospitalized and so forth. So if you had a veteran who appealed a denial of a claim and then was rehospitalized and opened another claim for an increase while the first one was on appeal and that was denied, you could have a second appeal. You could have multiple concurrent

claims going at the same time.

So I would have to say that we strongly oppose closing the record for fairness reasons and probably for efficiency reasons.

And that concludes my statement, Mr. Chairman.

[The statement of Rick Surratt appears on p. 63]

MR. MILLER. Thank you very much. I have got some questions, but I am going to ask staff to submit them to you for the record and ask Ms. Berkley if she has any questions.

MS. BERKLEY. I do, and I know that it takes me a little bit longer to get to the floor than you. I want to thank you very much for that. What you are saying has truly been the experience that we have had in my congressional office back home, and seems like just a series of problems.

But it seems to me that one of the big complaints is that when it is remanded back, often it is remanded back for records that the veteran has no control over. The VA has control of their medical records and has control of their service records as well, which needs to be part of the complete record.

So it is not -- it is outside of the control of the veterans, and it gets remanded. So that is a very serious concern to me. A lot of the information that is needed, the veterans don't have control of.

But I would be very interested in having attorneys involved in the initial case rather than waiting. It seems to me that we would correct a lot of these problems if they had some legal help from the beginning. So I think that is something that we might want to look at, and I thank you very much. And I have additional questions, but no time to ask them.

MR. MILLER. Thank you, Ms. Berkley. And the record may show that she doesn't have time to ask them not because the Chairman wouldn't let her ask them, but because we have a vote to go to.

But as Mr. Surratt points out in his testimony, and I quote, "Benefits for disabled veterans and their dependents and survivors are at the core of the program that the VA administers." And I think that is an appropriate quote to be using today.

We have to ensure that the claims adjudication process, beginning to end, serves our core constituency with timely and accurate rating decisions.

We are very interested in your work. We look forward to working with you and the stakeholders to achieve that end. And with nothing more for the good of the order, we must adjourn this hearing and proceed to the floor for a vote.

[Whereupon, at 11:47 a.m., the Subcommittee was adjourned.]

APPENDIX

**Chairman Jeff Miller
Opening Statement
Oversight Hearing of the Board of Veterans' Appeals
and the Appeals Management Center
May 5, 2005**

Good morning. The hearing will come to order.

Today we are receiving testimony on the policy and operational issues facing the Board of Veterans' Appeals (BVA) and the Appeals Management Center (AMC). There are some serious backlog issues at the Board and the AMC, and I look forward to better understanding what the Department is doing, and intends to do, to make the appeals process more efficient for veterans and other beneficiaries.

When a claimant disagrees with a decision by a VA regional office or medical center, he or she has the right to appeal the decision. The number of appeals continues to increase, and unfortunately some claimants must wait several years before a final decision is made on a claim. One purpose of this hearing is to determine areas to shave off delays.

Among the questions I hope to address today are: Is the system too procedurally cumbersome? Is additional staff going to solve the problem – as many of you are aware, this Committee recommended in its fiscal year 2006 Budget Views and Estimates an additional \$6 million/50 FTEE for the Board – or is the backlog a symptom of claims filing behavior and therefore resistant to improvement efforts?

I am also interested in knowing how BVA and the AMC set performance goals and objectives, and how those goals are met.

I welcome all of our witnesses and look forward to their comments and suggestions for improving the accuracy and disposition times of appeals.

**STATEMENT OF RON GARVIN,
ACTING CHAIRMAN, BOARD OF VETERANS' APPEALS**

BEFORE THE

**SUBCOMMITTEE ON DISABILITY ASSISTANCE AND ME-
MORIAL AFFAIRS**

**COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

May 5, 2005

Good morning, Mr. Chairman. It is a pleasure to discuss the operations of the Board of Veterans' Appeals with you, the members of the Subcommittee, and your staff.

The Board's testimony before the Subcommittee on Benefits in February 1994 and June 1998 provides important background information.

In Fiscal Year 1994, the Board issued about 22,000 decisions. Our pending caseload stood at 47,000, and was on its way to 60,000. Our measure of timeliness then used—average response time—was 781 days.

By Fiscal Year 1998, our timeliness had markedly improved and our pending caseload was down to less than 30,000 cases. We issued 38,886 decisions, and held 4,875 hearings. Appeals resolution time—the time from the date a veteran files a Notice of Disagreement until he or she receives a final decision on appeal—was 687 days.

I am proud to report that, since 1998, we have constantly improved.

In FY 2004, the Board issued 38,371 decisions, almost as many as were issued in FY 1998, and conducted 7,259 hearings, a substantial increase from 1998. Appeals resolution time decreased to 529 days. Our cycle time—the time that it actually takes the Board to issue a decision (excluding the time the case is with the service organization representative)—was 98 days. Cases pending at the end of FY 2004 stood at 21,430. Significantly, we accomplished these results with 440 FTE, or 43 less than we had in 1998.

These improvements over the past few years occurred in spite of several significant events, including the impact of the Veterans Claims Assistance Act of 2000, and the initiation and then termina-

tion of BVA evidence development due to the decision of the U.S. Court of Appeals for the Federal Circuit in *Disabled American Veterans v. Principi*.

We have received much help in achieving our successes, including from:

- o The Congress providing unqualified support for the appellate rights of veterans and their families.
- o The veterans service organizations, who represent about 85% of our appellants.
- o VA leadership that supports improvements in the appeals process to ensure that veterans receive timely and quality decisions.
- o The staff at the Board, including the Veterans Law Judges, counsel, and administrative support staff. Through their efforts productivity increased, over historic levels, by 20% for staff counsel, and by 25% for the VLJs. The number of hearings held also increased, with videoconference hearings nearly doubling since FY 1998. Finally, the average number of decisions per employee increased from 49.9 in FY 1994 and 80.5 in FY 1998, to 87.3 in FY 2004.

Two of the most significant and persisting challenges we face are

- o Eliminating avoidable remands, and
- o Increasing productivity to contain and reduce the appeals backlog.

In regard to remands, we know that:

- o Veterans want timely and correct decisions on claims for benefits. For the Board to do that, the record must contain all evidence necessary to decide the claim and show that all necessary due process has been provided. If the record does not meet these requirements, and the benefits sought cannot be granted, a remand for further development is necessary.
- o Remands lengthen appeals resolution time. One remand adds about a year to the process. Remands also divert resources from processing other claims and appeals.
- o We are working with VBA, OGC and VHA to identify and track root causes of remands, to provide training, and, ultimately, to elimi-

nate avoidable remands. The results are already encouraging, with the remand rate for the first part of FY 2005 dropping to 42.6%, as compared to 56.8% in FY 2004. For February and March 2005, the remand rate was even lower at 38.4%.

If nothing had been done, our backlog was projected to grow to unacceptable levels. The Board's backlog disposition time—the projected time it would take the Board, working at its current rate, to eliminate the backlog—would have increased from 170 days in 2004, to 391 days in 2006, and to nearly 600 days in 2008.

Through incentives and sound management we have beat our past projections, and intend to continue doing so by way of:

- o Eliminating avoidable remands: About 75% of cases remanded are returned to the Board, which increases our workload and degrades timeliness. A 50% reduction in remands in FY 2005 could reduce appeals resolution time by as much as 25 to 30 days.
- o Strengthening our intra-agency partnerships: Our joint training efforts with VBA, OGC, and VHA, will improve decision quality and reduce remands and appeals.
- o Writing shorter and more concise decisions: We are training our Veterans Law Judges and counsel to write shorter and more concise decisions.
- o Utilizing employee incentive, mentoring and training programs: A number of new programs have been introduced to increase employee motivation and satisfaction, as well as to increase productivity and decision quality.
- o Making use of overtime: We will use overtime within existing resources to enhance productivity.
- o Increasing our use of paralegals: We will increase the use of our paralegals for non-decisional support activities.

We believe these measures will work to reduce the backlog and shorten the time it takes for a veteran to receive a well-reasoned Board decision. Already, we have reduced the time it takes for an appeal to be finally resolved from 686 days in FY 1998, to 529 days in FY 2004. Our decision quality has improved from 88.8% in FY 1998 to 93% in FY 2004, and our cycle time is a little over three months.

In conclusion, we intend to continue working to develop new and cre-

ative solutions to the challenges we face in order to fulfill our statutory mission to hold hearings and provide timely, high quality decisions to our Nation's veterans and their families.

I would be pleased to answer any questions you or your colleagues might have.

Statement of Michael Walcoff
Associate Deputy Under Secretary for Field Operations
Veterans Benefits Administration
Before the Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs
United States House of Representatives

May 5, 2005

Chairman Miller and Members of the Subcommittee.

Thank you for providing me the opportunity to appear before you today to discuss the Department of Veterans Affairs' (VA) Appeals Management Center (AMC) operations.

My statement today is divided into two parts. I will begin, as you have requested, by discussing VBA's AMC operation. Then I will briefly discuss the Joint BVA/VBA Remand Reduction Project.

Appeals Management Center

The Appeals Management Center (AMC) was created in July 2003 following a Federal Circuit Court decision that invalidated part of VA's process for handling cases appealed to the Board of Veterans' Appeals (BVA). Prior to that court decision and the establishment of the AMC, BVA had created a development unit to itself develop cases on appeal that needed more development, instead of remanding those cases to the regional offices of jurisdiction to conduct the necessary development. The BVA unit had, in effect, assumed partial responsibility for case development previously assigned to VBA's regional offices. As a result of the Court's decision, the BVA generally may not consider in the first instance any evidence it develops, so the BVA resumed remanding cases that needed more development, and that responsibility was returned to VBA and assigned to the AMC. VBA determined that the best way to manage remand processing was to consolidate the responsibility to a single Appeals Management Center where resources and expertise could be concentrated.

The mission of the AMC is to process remands timely and consistently. The AMC has complete authority to develop remands, reach decisions based on additional evidence gathered, and authorize the payment of benefits. If the AMC is unable to grant an appeal in full, the appeal is recertified to BVA for continuation of the appellate process.

Beginning in July 2003, the AMC began receiving work from BVA. Though not fully staffed until January 2004, the AMC began intake, organization, and limited development on remands. In February 2004, the AMC was fully operational and established a goal of com-

pleting initial development of all pending remands by spring 2004. This goal was met in June 2004.

The initial work coming to the AMC consisted of two types of cases. The first category of cases consisted of the remands generated by BVA after July 2003. VBA had projected the volume of this workload to be 13,000 remands per year. Based on this projection, the AMC was staffed with 87 employees.

In the second category of cases were those that had been pending development actions at BVA at the time of the circuit court decision. There were 9,000 cases in this category for which BVA no longer had legal authority to initially consider any evidence it developed. These cases were converted by BVA to remands between July 2003 and January 2004 and transferred to AMC jurisdiction. Because of the one-time nature of this influx of 9,000 additional remands, a strategy was developed to increase resources on a temporary basis to assist the AMC with claims decisions. As a result, 46 additional employees were temporarily assigned to accomplish AMC work beginning in October 2004. These employees are located at VBA's resource centers in St. Petersburg, Huntington, and Cleveland.

During its first year of operation, the AMC received approximately 18,000 remands in addition to the 9,000 converted cases. This exceeded the 13,000 remands that had been estimated. Because of this greater than expected volume, VBA and BVA began aggressive joint initiatives to address the root causes of remands. These initiatives focused on increased coordination of data collection, identification of trends, and training.

These joint efforts are proving successful. The remand rate for FY 05 is 43% as of the end of March. This compares with the FY 04 remand rate of 56.8%. For the month of March 2005, the remand rate was 37%. Our goal is to reduce the remand rate to 30% by the end of FY 06.

The AMC is organized much like the Veterans Service Centers in VA regional offices. The AMC consists of one Triage Team, three Development Teams, one Rating Team, and one Authorization Team. The AMC provides public contact functions through a dedicated toll-free number unique to the AMC and has normal office hours for walk-in traffic. The AMC also provides full support for Freedom of Information Act, Privacy Act, and congressional inquiries.

Executive direction at the AMC is provided by a director and two assistant directors. One assistant director is responsible for the development of remands and the other is responsible for decisions made on the remands. The AMC's workforce is specifically trained and skilled in processing remanded claims. Organizationally, the AMC reports

to the Associate Deputy Under Secretary for Field Operations.

The AMC receives all remanded claims directly from BVA. All new remands are delivered to the AMC daily. A small number of remands are unable to be worked in the AMC for various procedural reasons and are returned to the regional office of jurisdiction. For example, if a remanded claim requires a local hearing, the AMC would be unable to comply with the remand order; therefore, the remand must be worked locally. Additionally, if a remand involves an issue not related to compensation and pension benefits, the remand is forwarded to the regional office of original jurisdiction.

Development of remands is initiated within 15 days of receipt at the AMC. A letter is sent to the appellant that explains how to contact the AMC, what the appellant can expect during the processing of the remand, and what is required of the appellant and the AMC.

Development is completed in strict compliance with the wording of the remand order. This often requires that steps in the remand order be completed sequentially and that a VA exam, including a medical opinion by a VA physician, be conducted. Once all development steps are completed, the claims file is forwarded to the Rating Team for a decision. If any part of the remand is granted, a decision is prepared. If any part of the remand continues to be denied, a supplemental statement of the case is prepared. Often, both documents are required.

Once a decision is made, accredited representatives (i.e., veteran service officers) are allowed the opportunity to review the unpromulgated decision. Following review by the representative, the file is forwarded to the Authorization Team, which processes the award and notifies the appellant. If a full grant of benefits is possible, the award action is completed, payment authorized, notification sent, and the completed file returned to the regional office of jurisdiction. If the appeal is not granted in full, the appeal is recertified to BVA. No claims files reside permanently at the AMC.

The AMC is reducing the number of pending remands. Since October 2004, the AMC inventory of pending remands has been reduced from 24,000 to 21,000. The goal is to reduce the pending inventory to 18,000 by the end of FY 05. The goal for FY 06 is to reduce the pending inventory to 12,000. Once these goals are met, the additional resources assigned to the AMC will be redirected to compensation claims at VBA's regional offices.

The AMC has enabled VBA to significantly improve the time it takes

to complete a remand. During FY 03, regional offices took an average of 700 days to complete a remand. Currently, it takes the AMC an average of 400 days to complete a remand. We continue to strive for further improvement. A strategic goal of 230 days on average to complete a remand has been established. The goal of 230 days represents the minimum time needed to complete a remand given the notification, evidence collection, and follow-up requirements of the Veterans Claims Assistance Act of 2000 (VCAA) and other legal requirements.

VBA does not require additional resources to reduce the number of remands pending. The high number and average age of pending remands are more closely related to procedures and due process requirements than to a lack of available resources. Remands are unique in that they often require sequential development steps, with requisite waiting periods between each step. Often remand instructions require that VBA contact the claimant to request identification of any outstanding evidence, obtain a medical release, or complete other development requirements, and our procedures provide the claimant with a 60-day timeframe to provide a response to such requests. Together with the waiting time our procedures require for third-party evidence, the appeals resolution process is necessarily prolonged to ensure that all necessary evidence is obtained and considered.

In addition, to ensure that VA has exhausted its efforts to obtain all federal records and made all reasonable efforts to obtain non-federal records, remand instructions sometimes require VBA to repeat prior efforts to assist the veteran obtain medical treatment records or other evidence that was generated many years ago. The custodians of these records are often very difficult to locate. In the case of federal records, the law requires that VA's efforts to secure these records, such as Social Security Administration records, continue until VA is reasonably certain that the records do not exist, or that further attempts to obtain these records would be futile.

Finally, remand orders often require VBA to obtain complex medical opinions from medical specialists that may not be readily available at all VA medical centers or in smaller cities, further increasing processing time.

Joint BVA/VBA Remand Reduction Project

In July 2004, the Deputy Secretary requested that VBA and the Board of Veterans' Appeals (BVA) accomplish three tasks:

- Agree upon a reliable process for capturing information prospectively on reasons for remands,
- Conduct a retrospective analysis of a representative sample

of remands to validate the agreed-upon tool, and

- Develop a plan for remedying the problem of avoidable remands.

A VBA/BVA team developed a new protocol to record reasons for remands. The protocol, in use since November 2004, distinguishes between remands due to VBA error, remands based on BVA's authority to develop evidence in the absence of a VBA error, and unavoidable remands, such as those resulting from changes in law.

On November 8, VBA/BVA submitted a report to the Deputy Secretary containing its planned remedial measures. VBA agreed to change claims procedures to more thoroughly document the record when attempts to secure federal records (e.g., Social Security records) failed, or attempts to verify PTSD stressors failed. VBA also agreed to conduct additional field training.

A broadcast on the importance of reducing remands was held in February 2005 with participation from the Deputy Secretary and BVA and VBA leadership. Additional broadcasts were held on other subjects that would result in reduced remands, including preparation of medical examination requests.

A computer-based training module on certifying a case to BVA was developed and sent to all VBA regional offices. Completion of the training module is mandatory for all Rating Veterans Service Representatives and Decision Review Officers on the Appeals Team.

Lastly, VBA has established a mailbox for questions on remands from the field. An intranet site was also created with a management reports function allowing a regional office to review its remand errors. The review and monitoring of remand data are on-going efforts. Analysis of the remand data allows VBA to determine the impact of current improvement efforts, as well as to identify future trends and develop and implement countermeasures to ensure avoidable remands are eliminated to the greatest extent possible. We anticipate that future efforts will include additional training, quality reviews, and regulatory changes, as appropriate.

Conclusion

In summary, VBA has increased its focus on the appellate workload over the past several years. Through our actions and actions taken in collaboration with BVA, we have implemented measures to reduce the number of remands and improve the timeliness of appeals processing. We believe we are moving in the right direction,

and continuing efforts will allow us to significantly improve the appeals process for veterans.

Mr. Chairman, this concludes my statement. I will be happy to respond to any questions that you or other members of the Subcommittee might have.



Testimony Before the Subcommittee on
Disability Assistance and Memorial
Affairs, Committee on Veterans' Affairs,
House of Representatives

For Release on Delivery
Expected at 10:30 a.m. EDT
Thursday, May 5, 2005

VA DISABILITY BENEFITS

Board of Veterans' Appeals Has Made Improvements in Quality Assurance, but Challenges Remain for VA in Assuring Consistency

Statement of Cynthia A. Bascetta, Director,
Education, Workforce and Income Security



May 5, 2005

GAO

Accountability Integrity Reliability

Highlights

Highlights of GAO-05-655T, a testimony before the Subcommittee on Disability Assistance and Memorial Affairs, House Committee on Veterans' Affairs

Why GAO Did This Study

The House Subcommittee on Disability Assistance and Memorial Affairs asked GAO to update a 2002 study to determine what VA has done to (1) correct reported weaknesses in methods used by the Board to select decisions for quality review and calculate the accuracy rates reported by the Board and (2) address the potential for inconsistency in decision-making at all levels of adjudication in VA, including VA's 57 regional offices and the Board. GAO said in 2002 that VA had not studied consistency even though adjudicator judgment is inherently required in the decision-making process, and state-to-state variations in the average disability compensation payment per veteran raised questions about consistency. In January 2003, in part because of concerns about consistency, GAO designated VA's disability program as high-risk.

What GAO Recommends

This testimony updates actions VA has taken to implement recommendations from the GAO's 2002 report, in which GAO recommended that VA take steps to (1) correct the weaknesses in the Board's sampling and accuracy rate calculation methods and (2) establish a system for assessing the consistency of decision-making at all levels of adjudication in VA, including VA's regional offices and the Board.

www.gao.gov/cgi-bin/getrpt?GAO-05-655T

To view the full product, including the scope and methodology, click on the link above. For more information, contact Cynthia A. Bascetta at (202) 512-7101.

VA DISABILITY BENEFITS

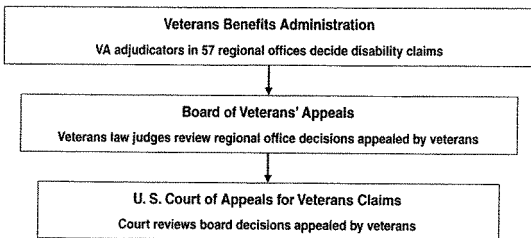
Board of Veterans' Appeals Has Made Improvements in Quality Assurance, but Challenges Remain for VA in Assuring Consistency

What GAO Found

The Department of Veterans Affairs (VA) has taken steps to respond to GAO's 2002 recommendations to correct weaknesses in the methods for selecting decisions by the Board of Veterans' Appeals (Board) for quality review and calculating the accuracy rates reported by the Board. Specifically, the Board now ensures that decisions made near the end of the fiscal year are included in the quality review sample, and the Board now excludes from its accuracy rate calculations any errors that do not have the potential for resulting in a reversal by or remand from the court. GAO found that the Board had not yet revised its formula for calculating accuracy rates in order to properly weight the quality review results for original Board decisions versus the results for Board decisions on cases remanded by the court. However, GAO believes correcting this calculation method will not materially affect the Board's reported accuracy rates.

VA still lacks a systematic method for ensuring the consistency of decision-making within VA as a whole, but has begun efforts to understand why average compensation payments per veteran vary widely from state to state. These efforts include studies underway by VA's Office of Inspector General and the Veterans Benefits Administration, which oversees the operations of VA's regional offices. Some variation is expected since adjudicators often must use judgment in making disability decisions, but VA faces the challenge of determining whether the extent of variation is confined within a range that knowledgeable professionals could agree is reasonable.

Steps in the Veterans Disability Claims and Appeals Process



Source: Prepared by GAO using information from VBA, Board of Veterans' Appeals, and U.S. Court of Appeals for Veterans Claims.

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to discuss our work related to the efforts of the Department of Veterans Affairs (VA) to assure the quality and consistency of disability decisions. Assuring the quality and consistency of VA's disability decisions is vital for assuring program integrity and equitable decisions. As you know, in January 2003, we designated VA's disability program, along with other federal disability programs, as high-risk.¹ In part, we designated VA's program as high-risk because of concerns about consistency of decision-making. Despite VA's efforts to provide training and enhance communication to improve the consistency of decisions, we found indications of inconsistency such as the wide variation among states in the average compensation payment per veteran.

You asked us to update our 2002 report in which we found that the Board needed to improve its quality review program.² Specifically, the Board needed to revise its sampling methods, the way it weighted quality review results in its calculation of accuracy rates, and the types of errors reported in the accuracy rates. In that report, we also found that VA needed to take action to assure consistency of decision-making within VA as a whole. Today I would like to highlight the steps the Board has taken since our 2002 report and discuss VA's recent efforts to address inconsistent decision-making. To update our 2002 report, we interviewed officials of and/or obtained pertinent documentation from the Board and the Veterans Benefits Administration (VBA), which oversees the operations of VA's 57 regional offices. We did our work in accordance with generally accepted government auditing standards in April 2005.

In summary, we found that the Board has taken action to strengthen its system for reviewing the quality of its own decisions, but VA still lacks a systematic method for ensuring the consistency of decision-making within VA as a whole. With respect to the Board, it has taken steps to improve the sampling and accuracy rate calculation methods of its quality review system and also to assure that serious errors are not obscured by mixing them with less significant deficiencies. Regarding consistency, VA still lacks a plan for an ongoing, systematic assessment of decision-making consistency at all levels of adjudication within VA. As we concluded in

¹GAO, *High-Risk Series: An Update*, GAO-03-119 (Washington, D.C.: January 2003).

²GAO, *Veterans' Benefits: Quality Assurance for Disability Claims and Appeals Processing Can Be Further Improved*, GAO-02-806 (Washington, D.C.: Aug. 16, 2002).

2002, such an assessment is needed to provide a foundation for determining acceptable levels of decision-making variation and to reduce variations found to be unacceptable. Although VA has much left to do regarding consistency of decision-making, it has begun efforts to understand the reasons behind one indication of inconsistency: the wide variations from state to state in the average compensation payment per veteran. These efforts include studies being done by VA's Office of Inspector General and VBA.

Background: The Disability Claims and Appeals Process

VA's disability compensation program pays monthly cash benefits to eligible veterans who have service-connected disabilities resulting from injuries or diseases incurred or aggravated while on active military duty. The benefit amount is based on the veteran's degree of disability, regardless of employment status or level of earnings.

A veteran starts the claims process by submitting a disability compensation claim to one of the 57 regional offices administered by VBA (see fig. 1). In the average disability compensation claim, the veteran claims about five disabilities. For each claimed disability, the regional office adjudicator must develop evidence and determine whether each disability is connected to the veteran's military service.³ The adjudicator then applies the medical criteria in VA's Rating Schedule to evaluate the degree of disability caused by each service-connected disability, and then the adjudicator determines the veteran's overall degree of service-connected disability.

If a veteran disagrees with the adjudicator's decision on any of the claimed disabilities, the veteran may file a Notice of Disagreement. If the regional office is unable to resolve the disagreement to the veteran's satisfaction,

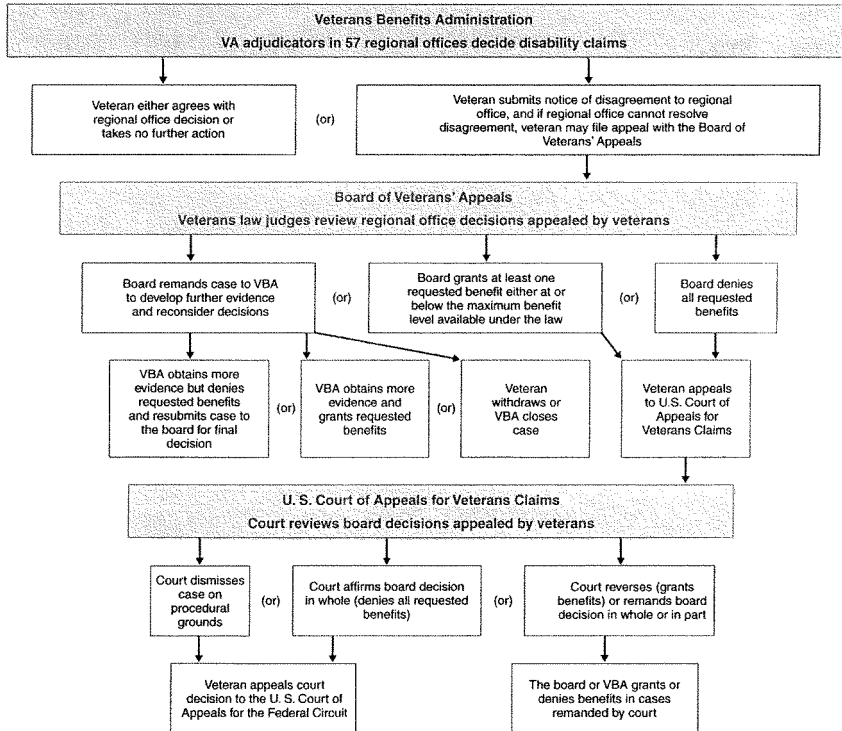
³The Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, (2000) requires VBA to assist claimants who have filed a complete claim for benefits. Specifically, VBA must: (1) notify claimants of the information necessary to complete the application; (2) indicate what information not previously provided is needed to prove the claim and distinguish between the portion of the information for which the claimant will be responsible and the portion for which VA will be responsible; (3) make reasonable efforts to assist claimants in obtaining evidence to substantiate claimant's eligibility for benefits, including relevant records; and (4) inform claimants when relevant records are unable to be obtained.

the veteran may appeal to the Board.⁴ A veteran can dispute a decision not only if the regional office denies benefits by deciding that an impairment claimed by the veteran is not service-connected. Even for a claimed impairment found to be service-connected, the veteran may dispute the severity rating that the regional office assigns to the impairment and ask for an increase in the rating.

During fiscal years 2003 and 2004, respectively, the regional offices made about 715,000 and 598,500 decisions involving disability compensation claims. According to VBA, during fiscal years 2003 and 2004, respectively, veterans submitted Notices of Disagreement in about 13.4 and 14.5 percent of all decisions involving disability ratings, and of the veterans who filed Notices of Disagreement, about 34.9 and 44.4 percent went on to submit appeals to the Board. Assisted by 240 staff attorneys, the Board's 52 veterans law judges decide veterans' appeals on behalf of the Secretary. The Board has full de novo review authority and gives no deference to the regional office decision being appealed. The Board makes its decisions based on only the law, VA's regulations, precedent decisions of the courts, and precedent opinions of VA's General Counsel. During the appeals process, the veteran or the veteran's representative may submit new evidence to the Board and request a hearing.

⁴In response to a Notice of Disagreement, the regional office provides a further written explanation of the decision, and if the veteran still disagrees, the veteran may appeal to the Board. Before appealing to the Board, a veteran may ask for a review by a regional office Decision Review Officer, who is authorized to grant the contested benefits based on the same case record that the regional office relied on to make the initial decision.

Figure 1: Steps in the Disability Claims and Appeals Process



Source: Prepared by GAO using information from VBA, Board of Veterans' Appeals, and U.S. Court of Appeals for Veterans Claims.

In fiscal year 2004, for all VA programs, the Board decided about 38,400 appeals, of which about 94 percent (35,900) were appeals of disability compensation cases that contained an average of 2.2 contested issues per

case. In any given case, the Board might grant the requested benefits for one issue but deny benefits for another. In some instances, the Board may find that a case is not ready for a final decision and return (or remand) the case to VBA for rework, such as obtaining additional evidence and reconsidering the veteran's claim. If VBA still does not grant the requested benefits after obtaining the additional evidence, it returns the case to the Board for a final decision. Of the appeals involving compensation cases decided during fiscal year 2004, the Board reported that it granted requested benefits for at least one issue in about 18 percent of the cases, denied all requested benefits in about 23 percent of the cases, and remanded about 58 percent of the cases to VBA for rework.⁵

Effective February 22, 2002, VA issued a new regulation to streamline and expedite the appeals process. Previously, the Board had remanded all decisions needing rework directly to VBA's regional offices. The new regulation, however, allowed the Board to obtain evidence, clarify evidence, cure a procedural defect, or perform almost any other action essential for a proper appellate decision without having to remand the appeal to the regional office. It also allowed the Board to consider additional evidence without having to refer the evidence to the regional office for initial consideration and without having to obtain the appellant's waiver. According to the Board, this change in the process reduced the time required to provide a final decision to the veteran on an appeal, allowed regional offices to use more resources for processing initial claims rather than remands, and virtually eliminated multiple remands on the same case to the regional offices. However, in May 2003, the U.S. Court of Appeals for the Federal Circuit held that the Board could not, except in certain statutorily authorized exceptions, decide appeals in cases in which

⁵The statistics in the Board's annual reports do not reflect all cases in which at least one issue is remanded or denied because the Board reports appeals outcomes on the basis of individual cases rather than individual issues within each case. To do this, the Board counts "cases" dispositions using the following hierarchy: (1) allowed, (2) remanded, (3) dismissed, and (4) denied. Under this hierarchy, if any issue or part of the appeal is allowed, the entire case is counted as an allowance, regardless of whether any other issue in the case is remanded or denied. If no issue or part of the appeal is allowed, but part is remanded and part is denied, the case is counted as a remand. If no issue or part of the appeal is allowed or remanded, but part is dismissed and part is denied, the case is counted as a dismissal. A case is counted as denied only when all issues or parts of the appeal are denied.

the Board had developed evidence.⁶ As a result, VA established a centralized Appeals Management Center within VBA in Washington, D.C., to take over evidence development and adjudication work on remands.

If the Board denies requested benefits or grants less than the maximum benefit available under the law, veterans may appeal to the U. S. Court of Appeals for Veterans Claims, an independent federal court. Unlike the Board, the court may not receive new evidence. It considers only the Board's decision; briefs submitted by the veteran and VA; oral arguments, if any; and the case record that VA considered and that the Board had available. In cases decided on merit (cases not dismissed on procedural grounds), the court may (1) reverse the Board's decision (grant contested benefits), (2) affirm the Board's decision (deny contested benefits) or (3) remand the case back to the Board for rework. Of the 3,489 cases decided on merit during fiscal years 2003-2004, the court reversed or remanded in part or in whole about 88 percent of the cases. Under certain circumstances, a veteran who disagrees with a decision of the court may appeal to the U.S. Court of Appeals for the Federal Circuit and then to the Supreme Court of the United States.

The Board Has Taken Steps to Improve Its Quality Assurance Program

The Board of Veterans' Appeals has taken action to strengthen its internal system for reviewing the quality of its own decisions. Specifically, the Board has taken steps to improve its quality review system's sampling methodology and to avoid obscuring serious errors by mixing them with less significant deficiencies. We found, however, that the Board still needs to revise its formula for calculating accuracy rates in order to avoid potentially misleading accuracy rates.

⁶In *Disabled American Veterans v. Secretary of Veterans Affairs*, 327 F.3d 1339 (Fed. Cir. 2003), the Court held that allowing the Board—which is VA's "appellate tribunal" for deciding appeals of denials of veterans' benefits claims—to consider additional evidence without having to remand the case to the agency of original jurisdiction (regional office) for initial consideration and without having to obtain the appellant's waiver was contrary to the requirement of 38 U.S.C. § 7104(a) that "[a]ll questions in a matter which . . . is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary." Section 7104(b) does not permit the reconsideration of a claim disallowed by Board in the absence of new and material evidence as required by 38 U.S.C. 5108; however the regulation in question resulted in the veteran's not being able to object effectively to any of the additional evidence obtained by the Board until after the Board had weighed the evidence and decided the appeal, therefore not permitting the veteran to explore effectively a basis for "one review on appeal to the Secretary" with respect to the additional evidence obtained by the Board.

During our 2002 evaluation, we reviewed the Board's methods for selecting random samples of Board decisions and calculating accuracy rates for its decisions. We found that the number of decisions reviewed was sufficient to meet the Board's goal for statistical precision in estimating its accuracy rate.⁷ However, we pointed out some Board practices that might result in misleading accuracy rates. These practices included not ensuring that decisions made near the end of the fiscal year were sampled and not properly weighting quality review results in the formula used to calculate accuracy rates. At the time of our 2002 report, the Board had agreed in principle to correct these practices.

We found in our most recent work that the Board took corrective action in fiscal year 2002 to assure that decisions made near the end of the fiscal year were sampled. The quality review program now selects every 20th original decision made by the Board's veterans law judges and every 10th decision they make on cases remanded by the court to the Board for rework. However, we found that the Board had not revised its formula for calculating accuracy rates in order to properly weight the quality review results for original decisions versus the results for decisions on remanded cases. We determined that, even if this methodological error had been corrected earlier, the accuracy rate reported by the Board for fiscal year 2004 (93 percent) would not have been materially different. However, to avoid the potential for reporting a misleading accuracy rate in the future, corrective action needs to be taken, and the Board agreed to correct this issue in the very near future.

In our 2002 evaluation, we also found that the Board included nonsubstantive deficiencies (errors that would not be expected to result in either a remand by the court or a reversal by the court) in calculating its reported accuracy rates. We concluded that the reported accuracy rates understated the level of accuracy that would result if the Board, like VBA, counted only substantive deficiencies in the accuracy rate calculation.⁸

⁷The Board's intention is that VA can have 95 percent confidence that the Board's true accuracy rate is no more than 5 percentage points higher or lower than the estimated accuracy rate.

⁸At that time, the Board's quality reviewers assessed decision accuracy on the basis of six areas: issues, evidence, laws and regulations, reasons and bases, due process, and format. One error (or deficiency) in any area meant that a decision failed the quality test. However, according to the Board, all six areas included certain deficiencies that are not substantive. According to the Board, most deficiencies in the "format" category were not substantive, such as errors in grammar, spelling, or decision structure.

VBA had ceased counting nonsubstantive deficiencies in its error rate after the VA Claims Processing Task Force said in 2001 that mixing serious errors with less significant deficiencies could obscure what is of real concern. Similarly, we recommended that the Board's accuracy rates take into account only those deficiencies that would be expected to result in a reversal or a remand by the court. In fiscal year 2002, the Board implemented our recommendation.

Also, during the course of our 2002 evaluation of the quality review program, we brought to the Board's attention the governmental internal control standard calling for separation of key duties and the governmental performance audit standard calling for organizational independence for agency employees who review and evaluate program performance. These issues arose because certain veterans law judges who were directly involved in deciding veterans' appeals were also involved in reviewing the accuracy of such decisions. The Board took corrective actions during our review in May 2002 to resolve these issues so all quality reviews from which accuracy rates are determined are done by persons not directly involved in deciding veterans' appeals.

In 2002, we also found that the Board collected and analyzed issue-specific data on the reasons that the Court remanded decisions to the Board in order to provide feedback and training to the Board's veterans law judges; however, the Board did not collect issue-specific data on the errors that its own quality reviewers found in decisions of the Board's veterans law judges. We recommended that the Board revise its quality review program to begin collecting such issue-specific error data in order to identify training that could help improve decision quality. In April 2005, the Board said it did not implement this recommendation because it believes the benefits would be too limited to justify the substantial reprogramming of the data system that would be required to collect issue-specific data. The Board also pointed out that the issue-specific data captured for court remands have not proved to be as useful as it had expected in identifying ways to provide training that could reduce court remands.

VA Faces Challenges in Measuring Consistency But Has Recently Initiated Studies

Adjudicator judgment is an inherent factor in deciding disability claims, and it introduces the potential for variation in the process. Part of assessing inconsistency, as we recommended in 2002, would include determining acceptable levels of variation for specific types of disabilities. In late 2004, in response to adverse media reports, VA initiated its first study of consistency. Such studies are the first step in determining the degree of variation that occurs and what levels of variation are acceptable.

Adjudicator Judgment Results in Inherent Variation in Decision-making

Adjudicators often must use judgment in making disability decisions. Judgment is particularly critical when the adjudicator must (1) assess the credibility of different sources of evidence; (2) evaluate how much weight to assign different sources of evidence; or (3) assess some disabilities, such as mental disorders, for which the disability standards are not entirely objective and require the use of professional judgment. In such cases, two adjudicators reviewing the same evidence might make differing judgments on the meaning of the evidence and reach different decisions, neither of which would necessarily be found in error by any of VA's quality reviewers.

For example, in an illustration provided by the Board, consider a disability claim that has two conflicting medical opinions, one provided by a medical specialist who reviewed the claim file but did not examine the veteran, and a second opinion provided by a medical generalist who reviewed the file and examined the veteran. One adjudicator could assign more weight to the specialist's opinion, while another could assign more weight to the opinion of the generalist who examined the veteran. Depending on which medical opinion is given more weight, one adjudicator could grant the claim and the other could deny it. Yet, a third adjudicator could apply VA's "benefit-of-the-doubt" rule and decide in favor of the veteran. Under this rule, if an adjudicator concludes that there is an approximate balance between the evidence for and the evidence against a veteran's claim, the adjudicator must decide in favor of the veteran.

In the design of their quality review systems, VBA and the Board acknowledge the fact that, in some cases, different adjudicators reviewing the same evidence can make differing, but reasonable, judgments on the meaning of the evidence. As a result, VBA and the Board instruct their quality reviewers that when they review a decision, they are not to record an error merely because they would have made a different decision than the one made by the adjudicator. VBA and the Board instruct their quality reviewers to not substitute their own judgment in place of the original

adjudicator's judgment if the adjudicator's decision is adequately supported and reasonable.

Another example provided by the Board demonstrates how adjudicators must make judgments about the degree of severity of a disability. VA's disability criteria provide a formula for rating the severity of a veteran's occupational and social impairment due to a variety of mental disorders. This formula is a nonquantitative, behaviorally oriented framework for guiding adjudicators in choosing which of the degrees of severity shown in table 1 best describes the claimant's occupational and social impairment.

Table 1: VA's Medical Criteria for Evaluating the Degree of Occupational and Social Impairment Due to Mental Disorders

Degree of occupational and social impairment as characterized in VA's medical criteria	Disability rating (in percent)
Totally impaired	100
Deficient in most areas such as work, school, family relations, judgment, thinking, or mood	70
Reduced reliability and productivity	50
Occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks	30
Mild or transient symptoms that decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or symptoms can be controlled by continuous medication	10
Not severe enough to interfere with occupational or social functioning or to require continuous medication	0

Source: Board of Veterans' Appeals and VA's Schedule for Rating Disabilities.

Similarly, VA does not have objective criteria for rating the degree to which certain spinal impairments limit a claimant's motion. The adjudicator must assess the evidence and decide whether the limitation of motion is "slight, moderate, or severe." To assess the severity of incomplete paralysis, the adjudicator must decide whether the veteran's paralysis is "mild, moderate, or severe." The decision on which severity classification to assign to a claimant's condition could vary in the minds of different adjudicators, depending on how they weigh the evidence and how they interpret the meaning of the different severity classifications.

Consequently, it would be unreasonable to expect that no decision-making variations would occur. But it is reasonable to expect the extent of variation to be confined within a range that knowledgeable professionals could agree is reasonable, recognizing that disability criteria are more

objective for some disabilities than for others. For example, if two adjudicators were to review the same claim file for a veteran who has suffered the anatomical loss of both hands, VA's disability criteria state unequivocally that the veteran is to be given a 100 percent disability rating. Therefore, no variation would be expected. However, if two adjudicators were to review the same claim file for a veteran with a mental disability, knowledgeable professionals might agree that it would not be out of the bounds of reasonableness if one adjudicator gave the claimant a 50 percent disability rating and the other adjudicator gave a 70 percent rating. However, knowledgeable professionals might also agree that it would be clearly outside the bounds of reasonableness if one adjudicator gave the claimant a 30 percent rating and the other, a 100 percent rating.

**VA Began Studying
Decision-making
Consistency in December
2004**

Although the issue of decision-making consistency is not new, VA only recently began to study consistency issues. In a May 2000 testimony⁹ before the House Subcommittee on Oversight and Investigations, Committee on Veterans' Affairs, we underscored the conclusion made by the National Academy of Public Administration in 1997¹⁰ that VBA needed to study the consistency of decisions made by different regional offices, identify the degree of subjectivity expected for various medical issues, and then set consistency standards for those issues. In August 2002, we drew attention to the fact that there are wide disparities in state-to-state average compensation payments per disabled veteran, and we voiced the concern that such variation raises the question of whether similarly situated veterans who submit claims to different regional offices for similar conditions receive reasonably consistent decisions. In January 2003, we reported that concerns about consistency had contributed to GAO's designation of the VA disability program as high-risk in 2003. Again, in November 2004, we highlighted the need for VA to develop plans for studying consistency issues.

Most recently, in December 2004, the media drew attention to the wide variations in the average disability compensation payment per veteran in the 50 states and published data showing that the average payments varied from a low of \$6,710 in Ohio to a high of \$10,851 in New Mexico. Reacting

⁹GAO, *Veterans Benefits Administration: Problems and Challenges Facing Disability Claims Processing*, GAO/T-HEHS/AIMD-00-146 (Washington, D.C.: May 18, 2000).

¹⁰National Academy of Public Administration, *Management of Compensation and Pension Benefits Claim Processes for Veterans*, (Washington, D.C.: August 1997).

to these media reports, in December 2004, the Secretary instructed the Inspector General to determine why average payments per veteran vary widely from state to state. As of February 2005 the Office of Inspector General planned to use data obtained from VBA for all regional offices to identify factors that may explain variations among the regional offices.

In March 2005, VBA began a study of three disabilities believed to have potential for inconsistency: hearing loss, post-traumatic stress disorder, and knee conditions. VBA assigned 10 subject matter experts to review 1,750 regional office decisions and plans to complete its analysis of study data in mid-May 2005, develop a schedule for future studies of specific ratable conditions, and recommend a schedule for periodic follow-up studies of previously studied conditions.

In our 2002 report, we recommended that VA establish a system to regularly assess and measure the degree of consistency across all levels of VA adjudication, including regional offices and the Board, for specific medical conditions that require adjudicators to make difficult judgments. For example, we said VA could create hypothetical claims for certain medical conditions, distribute the claims to multiple adjudicators at each decision-making level, and analyze variations in outcomes. Such a system would identify variation in decision making and provide a basis to identify ways, if considered necessary, to reduce variation through training or clarifying and strengthening regulations, procedures, and policies.

Although VA agreed in principle with our recommendation and agreed that consistency is an important goal, it commented that it would promote consistency through training and communication. We support such efforts but still believe VA needs to directly evaluate and measure consistency across all levels of adjudication. Otherwise, VA cannot determine whether such training and other efforts are directed at the causes of inconsistency and whether such efforts actually improve consistency.

In our November 2004 report,¹¹ we found that VBA's administrative data was insufficient to analyze inconsistency because we could not reliably use the data to identify decisions made after fiscal year 2000, identify the regional offices that made the original decisions, or determine service-connection denial rates for specific impairments. However, in October

¹¹GAO, *Veterans Benefits: VA Needs Plan for Assessing Consistency of Decisions*, GAO-05-99 (Washington, D.C.: Nov. 19, 2004).

2004, VBA completed its implementation of a new nationwide data system, known as Rating Board Automation (RBA) 2000. VA said this new system could reliably collect the types of data needed to perform the analyses we sought to do. Therefore, we recommended that the Secretary of Veterans Affairs develop a plan, and include it in VA's annual performance plan, containing a detailed description of how VA intended to use data from the new RBA 2000 information system. We recommended that VA conduct systematic studies of the impairments for which RBA 2000 data reveal indications of decision-making inconsistencies among regional offices. VA concurred with our recommendation. Because the new RBA 2000 data system had been recently implemented, we acknowledged that VA could not implement such a plan until it accumulated a sufficiently large body of data under the new system. In our judgment, at least one year of data would be needed to begin such a study.

While we believe the studies recently begun by the Office of Inspector General and VBA are positive steps forward in addressing consistency issues, the RBA 2000 data system, if found to be reliable, can provide VA with the data needed to proactively and systematically target specific impairments that have the widest variations in decision-making outcomes among the regional offices and focus VA's efforts to study reasons for variations on those impairments. Building in such analytical capability to augment its quality assurance program would help enhance program integrity and better assure that veterans' disability decisions are made fairly and equitably.

Mr. Chairman, this concludes my remarks. I would be happy to answer any questions you or the members of the subcommittee may have.

Contact and Acknowledgements

For further information, please contact Cynthia A. Bascetta at (202) 512-7101. Also contributing to this statement were Irene Chu, Ira Spears, Martin Scire, and Tovah Rom.

Related GAO Products

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**STATEMENT OF
ROBERT VINCENT CHISHOLM
PAST PRESIDENT OF THE
NATIONAL ORGANIZATION OF
VETERANS ADVOCATES
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND
MEMORIAL AFFAIRS
VETERANS' AFFAIRS COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
MAY 5, 2005**

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to present the views of the National Organization of Veterans' Advocates ("NOVA") on the operations of both the Board of Veterans' Appeals and the Appeals Management Center. NOVA is a not-for-profit educational organization created under 26 U.S.C. § 501(c)(3) for attorneys and non-attorney practitioners who represent veterans, surviving spouses, and dependents, before the Court of Appeals for Veterans Claims ("CAVC") and on remand before Department of Veterans Affairs ("VA"). NOVA has written many amicus briefs on behalf of claimants before the CAVC and the United States Court of Appeals for the Federal Circuit ("Federal Circuit"). The CAVC recognized NOVA's work on behalf of veterans when it awarded the Hart T. Mankin Distinguished Service Award to NOVA in 2000. The positions stated in this testimony have been approved by NOVA's board of directors and represent the shared experiences of NOVA's members.

For the past fourteen years I have been representing claimants at all stages of the veteran's benefits system from the VA regional office to the Board of Veterans' Appeals to the CAVC as well as before the Federal Circuit.

A claimant who files a new claim for benefits that is denied by the VA usually faces a three to five year horizon before he or she receives a final decision from the Board of Veterans' Appeals. If that same claimant then appeals the case to the Court of Appeals for Veterans Claims, it may take another twelve to eighteen months for the Court to render a final decision. When the Court acts in the claimant's favor, it will most likely result in a remand back to the Board of Veterans' Appeals. See *Swiney v. Gober*, 14 Vet. App. 65 (2000) (wherein the CAVC acknowledged "outright reversal on the merits has been very rare" and remands are the norm). The remand from the CAVC provides the claimant with the opportunity to submit additional evidence and arguments in favor of the claim at issue, and it preserves the claimant's favorable effective date if there is an award

of benefits. The problem, however, is that many claimants do not survive the protracted adjudicatory process. Those claimants who do survive are subjected to interminable delays before the VA.

Remanded claims and Board Docketing of Appeals.

I would first like to direct my testimony to the issue of claims remanded from the Court to the Board of Veterans' Appeals. A "remand" is simply an order sending the case back down the ladder to be done over again. It is upon return from the Court to the Board of Veterans' Appeals that delays in adjudication are exacerbated.

In 1994, Congress enacted the Veterans Benefits Improvement Act. Section 302 of the Act, Pub.L. No. 103-446, § 302, 108 Stat. 4645, 4658 (1994), which provided for expeditious treatment of veterans claims that were remanded from the Court of Appeals for Veterans Claims back to the Board of Veterans' Appeals. In addition, the Act requires claims remanded from the Board to the VA regional offices to receive expeditious treatment. The statute specifically mandates that "[t]he Secretary of Veterans Affairs shall take such actions as may be necessary to provide for the expeditious treatment, by the Board of Veterans' Appeals and by the VA regional offices of the Veterans Benefits Administration, of any claim that has been remanded by the Board of Veterans' Appeals or by the United States Court of Veterans Appeals for additional development or other appropriate action." This act was codified in 2003 by Pub. L. 108-183, Title VII, § 707(a)(1), 117 Stat. 2672.) at 38 U.S.C. § 5109B. It provides that "[t]he Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the appropriate VA regional office of the Veterans Benefits Administration of any claim that is remanded to a regional office of the Veterans Benefits Administration by the Board of Veterans' Appeals." In addition, Pub. L. 108-183, Title VII, § 707(a)(1), 117 Stat. 2672) codified the VBIA at 38 U.S.C. § 7112 which provides that the Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the Board of any claim that is remanded to the Secretary by the Court of Appeals for Veterans Claims.

The intent behind the VBIA 1994 and the subsequent statutory codification is clear: Congress wants those claimants who have been unable to get a final decision from the Board to thereafter receive expeditious treatment whether on remand from the CAVC or on remand from the Board to the VA regional offices. The problem, however, is the Board has failed to execute the will of Congress.

Docketing of Cases by the Board of Veterans' Appeals

The Board's failure to implement the intent of Congress regarding expeditious treatment of remanded cases is exemplified in the Board's docketing procedure for remanded claims. The Secretary has promulgated certain regulations to govern the order in which ap-

peals to the Board are decided. Generally speaking, the Board decides appeals in the order in which they are received from the VA regional offices. 38 C.F.R. § 20.900(a). Therefore, if a claim has a 2003 docket number it is supposed to be decided before a case with a 2004 docket number and so on. Remanded claims that are returned to the Board assume their original place on the docket. 38 C.F.R. § 20.900(a). If a case with a 1999 Board docket number is remanded to the VA regional office and then returns to the Board in March 2005, it should retain the 1999 docket number, not a new 2005 Board docket number.

Finally, the Board has a specific regulation issued in response to the requirement to provide expeditious treatment to remanded claims from the Court. That regulation provides: "A case remanded by the United States Court of Appeals for Veterans Claims for additional development or other appropriate action will be treated expeditiously by the Board without regard to its place on the Board's docket." 38 C.F.R. § 20.900(d).

Delay— Not Expeditious Treatment— Is the Norm

Typically, veterans face years of delay instead of receiving the expeditious treatment required by Congress. Delay occurs at two critical junctures:

- (1) When a case is remanded from the Court to the Board, and
 - (2) When the Board remands a case back to the VA regional office and the denial is sustained by the VA regional office.
- In this latter situation, the matter is supposed to retain its earlier Board docket number but most cases are assigned new docket numbers.

As noted above, the first significant time delay occurs when the cases are remanded from the CAVC to the Board of Veterans' Appeals. When a case is remanded from the Court to the Board, the Board is required to send a letter to the claimant and the representative of record to provide them with 90 days to submit additional evidence. Once that letter is responded to by the claimant or the representative, the Board is required to render a new decision. In my experience, claimants are waiting up to a year for a new decision.

The second situation, when the Board remands a case back to the VA regional office, causes far more grievous delay, especially where the VA regional office grants a part of the claim, but then commits error by denying less than the full relief required by law. In that situation, Congress requires that the Board expeditiously review the regional office decision, but often it does not.

For example, assume that in 1996, a Persian Gulf War veteran filed a claim for service connection of post traumatic stress disorder (PTSD), which the VA regional office finally denied in 1999. The veteran appeals to the Board of Veterans' Appeals where the case is

given a 1999 docket number. The Board issues a remand decision in 2004 because the VA regional office failed to obtain a medical opinion on issues necessary to decide the veteran's claim. Based on the newly obtained medical opinion, the VA regional office finally decides that the Gulf War veteran is entitled to disability compensation for his PTSD, but the VA regional office assigns a rating of only 50%, and awards benefits as of the date the VA obtained the medical opinion—even though the veteran's PTSD has prevented him from working since his claim was filed in 1996. Under those circumstances, the law requires the VA to rate the veteran as 100% disabled and to pay him benefits at the 100% rate, starting in 1996 when he filed his claim.

Unfortunately, the VA regional office grants some relief, but less than what the law requires, and less than what the veteran is entitled to and needs because of his disability. The veteran's only remedy is to appeal, again, to the Board of Veterans' Appeals, and ask the Board, again, to correct the VA regional office's mistake and assign a higher rating and an earlier effective date.

Here lies the problem: Getting the case back before the Board can take another three to five years, because the Board has no protocol to require docketing personnel to retain the earlier and clearly more advantageous docket number. Instead, the docketing personnel usually assign a new docket number. In the case of our hypothetical Gulf War veteran, then, his 2005 appeal to the Board would be assigned a 2005 docket number, rather than retaining his original 1999 docket number. This means that instead of having his case set for immediate Board review, he is sent to the back of the line for another three to five year wait, on a claim that was first filed in 1996 - nine years ago already. The additional delay of three to five years is caused by the Board assigning a new docket number to the veteran's claim, instead of retaining the earlier, original docket number.

If the claimant is not helped by a sophisticated representative, the claimant will not even know that he was entitled to faster consideration. In order to assure that the Board is complying with its own docketing procedures for remanded claims, I as well as other attorneys, have found it a necessary practice to file petitions for writs of mandamus with the Court of Appeals for Veterans Claims. E.g., *Dailey v. Principi*, 17 Vet. App. 61 (2003); *Vargas-Gonzalez v. Principi*, 15 Vet. App. 222 (2001). In over 75% of my cases that are returned to the Board of Veterans' Appeals after remand, I must send a letter to the Board because the case was assigned a new Board docket number instead of the original one. The process should be automatic, but it is not. Once again, a claimant who does not have the help of a sophisticated representative will never know what happened.

The Board's Statistical Tabulations.

I would also like to comment on NOVA's concern about the

methodology used by the Board to generate its statistics for its annual reports. In order for Congress to understand the operations of the Board and the Appeals Management Center, an accurate representation of what happens at the Board is necessary.

Every year the Board of Veterans Appeals in its annual report provides the following information: (1) the total number of decisions made; (2) the number of allowed claims; (3) the number of remanded claims and (4) the number of denied claims. The following data is from the Board annual report:

Fiscal Year	Number of Board Decisions	Allowed	Remanded	Denied
2004	38,371	17.1%	56.8%	24.2%
2003	31,397	22.1%	42.6%	32.6%

The data in the Board's Annual Report is misleading in the following way. Many claimants' claims have multiple issues. By way of example, a single claimant could have claims for PTSD, hearing loss, tinnitus and Agent Orange-related illnesses. If the Board grants the claimant a 10% rating for hearing loss and denies the claims for PTSD, tinnitus and Agent Orange, the Board considers that an "allowed" claim for the purposes of its annual report. The Board simply fails to report in its annual report that it has denied the remaining three issues, each of which is an appealable claim to Court. Thus, the Board fails to report the total number of actual claims denied.

Quality of Decision Making at the Board

In order to truly assess the quality of Board decision making, one needs to examine what is happening to the cases appealed from the Board to the Court. The CAVC in its annual report provides data regarding the total number of cases filed and the dispositions of those cases.

Fiscal Year	Merits Decisions	Percentage Remanded
2000	1619	63%
2001	2853	96%
2002	972	72%
2003	2152	91%
2004	1337	83%

The data is from the following website address: <http://www.vetapp.gov/AboutCourt/Annual%20Reports.pdf>.

This evidence is indicative of a lack of quality decision making at the Board. A claimant who is denied benefits has a much better than even chance of getting a remand from the Court due to errors committed by the Board.

The Need for Legal Representation Before the Board

A final thought regarding the operation of the Board specifically and the adjudication of claims generally. Presently, claimants

do not have the choice to hire and compensate an attorney until after the Board issues the first final decision on the case. 38 U.S.C. §§ 5904 and 5905. As my testimony demonstrates, obtaining a “first final decision” from the Board is a lengthy and unnecessarily protracted process. Consequently, under the current statutory scheme, a claimant’s first opportunity to compensated counsel occurs only after the first final decision of the Board. As a result, a claimant’s right to the compensated assistance of counsel occurs after the evidentiary record is closed.

The right of a claimant to hire counsel is further limited by the requirement that the claimants retain the attorney within one year of the final Board decision. 38 U.S.C. § 5904(c)(1). As a practical matter, however, if the attorney is not hired within 120 days of the final Board decision, the right to appeal the Board decision to the CAVC is extinguished. In order to preserve the claimant’s right to judicial review, the claimant must appeal the Board decision within 120 days of the Board decision. 38 U.S.C. § 7266(a). Further, if a claimant does not hire counsel within one year, then any further efforts involving the same claim or claims prohibit the compensation of an attorney until after another final decision of the Board of Veterans’ Appeals. As noted above, the Board routinely commits errors in its decisions and if the claimant does not appeal that case to Court, the matter ends.

On behalf of NOVA, I would like to thank the subcommittee for the opportunity to present this testimony. Oversight of the VA adjudication process is critical and necessary to ensure that the intent of Congress to compensate veterans and their families for all benefits which can be supported in law is not thwarted. NOVA believes that the most effective means of ensuring that the VA provides all benefits which can be supported in law, is to permit all claimants the right to hire an attorney at the initial claims process. The current system merely reinforces the adjudicatory errors of the VA and compounds needless delay of these claims. NOVA submits that an amendment to 38 U.S.C. §§ 5904 and 5905 to permit legal representation at the initial claim level is necessary.

*STATEMENT OF
RICK SURRATT
DEPUTY NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMO-
RIAL AFFAIRS
MAY 5, 2005*

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you on behalf of the Disabled American Veterans (DAV) and its Auxiliary to present our organization's views on the functioning and performance of the appellate operations of the United States Department of Veterans Affairs (VA), as carried out by its Board of Veterans' Appeals (BVA or Board) and Appeals Management Center (AMC). Made up of service-connected disabled veterans, the DAV is an organization whose members, and family members in the Auxiliary, have a special interest in the subject of today's oversight hearing. Incidental to our close interaction with VA, we also conduct ongoing monitoring of its performance and thereby endeavor to be a partner in your oversight role.

Benefits for disabled veterans and their dependents and survivors are at the core of the programs VA administers. The effective administration of programs, including appellate review of claims decisions, is essential to the fulfillment of VA's momentous mission to care for our Nation's veterans. Approximately 95 percent of BVA's workload involves disability compensation and pension claims. Your oversight to ensure VA is faithfully executing and properly implementing the law and effectively managing the programs Congress created for veterans is necessary to guarantee veterans receive the benefits to which they are entitled by law and to impose the accountability for results and efficiency that our citizens rightfully demand. Your vigilant oversight of performance, your watchfulness of execution of the laws, creates an incentive for better performance by VA.

Our laws, like the human relationships they regulate, are often complex and ever evolving. The laws that govern veterans' rights and benefits are no different. These laws can be quite complicated, especially where they deal with cause-and-effect relationships between service in the Armed Forces and diseases and injuries, and the quantification of disability from those diseases and injuries for compensation purposes. Thus, in veterans' benefits, as it is gener-

ally, law is not an exact science. Because of the variables of human interactions and the consequent nuances inherent in the factual bases on which legal rights rest, adjudications require the intervention of human judgment. Such judgment is, of course, not infallible. Under our legal system, we therefore view the right to appeal as an important element of fairness and necessary to safeguard against injustices that result from human error. Because appellate review is so essential to ensuring justice in an unavoidably imperfect adjudication system, the proper functioning of appellate processes is of major importance, especially where the rights and benefits of our veterans are involved.

As a statutory board, BVA was created in recognition of the importance of an effective appellate body within the VA administrative process and after experiments with other variations of appellate review had proven unsatisfactory. By consolidating and centralizing the appellate board in Washington, D.C., under the authority of the agency head, then the Administrator of VA, the problems of decentralization, lack of uniformity, and the lack of finality were addressed through a clearer sense of direction. By Executive Order issued July 28, 1933, President Franklin D. Roosevelt established BVA, and that Executive Order was promulgated as Veterans Regulation No. 2(a), which later became law through operation of statutory provision. By Veterans Regulation No 2(a), the President mandated that BVA would sit at VA's Central Office, be directly under the Administrator, provide one review on appeal to the Administrator, afford "every opportunity" for a "full and free consideration and determination," provide "every possible assistance" to appellants, have final authority, and take final action that would be "fair to the veteran as well as the Government." Since its inception, BVA has operated separate and independent from the other elements of VA. While there have been some changes in its configuration since 1933, BVA has retained its basic concept and mission.

As it exists today, BVA's mission is still to make the final decision on behalf of the VA Secretary in claims for benefits. Section 7104 of title 38, United States Code, provides: "All questions in a matter which . . . is subject to a decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board." The Board operates under various statutory provisions codified at chapter 71 of title 38, United States Code, as well as regulations in part 19 and rules of practice in part 20 of title 38, Code of Federal Regulations.

Although BVA generally makes the final decision in an appeal, the appellate process begins with the VA field office that made

the decision appealed, referred to as the agency of original jurisdiction, and, in some instances, action by the agency of original jurisdiction in an appealed case alleviates the need for a final decision by BVA. An appeal may be favorably resolved by the agency of original jurisdiction before the case is transferred to BVA or after the case has been sent back, “remanded,” to the agency of original jurisdiction to cure some procedural omission or record defect. Up to 50 percent of the appealed cases are resolved by the agencies of original jurisdiction and never reach the Board. However, about 75 percent of the remanded cases are returned to the Board for a final decision.

A veteran or other claimant initiates an appeal by filing a “notice of disagreement” with the agency of original jurisdiction. The agency of original jurisdiction may then take such additional development or review action as it deems proper. If such action does not resolve the disagreement, the agency of original jurisdiction issues to the appellant a “statement of the case” that contains a summary of the pertinent evidence, a citation of the pertinent legal authorities along with an explanation of their effect, and an explanation of the reasons for the decision on each issue. To complete, or “perfect,” the appeal, the appellant must then file with the agency of original jurisdiction a “substantive appeal,” a written statement specifying the benefit or benefits sought and the bases of the appellant’s belief that he or she is legally entitled to the benefit or benefits. Upon receipt of the substantive appeal, VA enters the case on the BVA docket. The BVA docket is a list of cases perfected for appellate review compiled by the chronological order in which the substantive appeal was received. The Board receives these cases for review by their order on the docket, although a case may be advanced on the docket for demonstrated hardship or other good cause. The Board must afford each appellant an opportunity for a hearing before deciding his or her appeal. The hearing may be held before the BVA at its principal office or at a VA facility located within the area served by appellant’s VA regional office. The Board may enter a decision that orders the granting of appropriate relief, denying relief, or remanding the appeal for further action by the agency of original jurisdiction.

The Board may reconsider its decision upon an order by its chairman on the chairman’s initiative or upon a motion by the claimant, and the Board may correct an obvious error in the record without regard to an order for reconsideration. The Board is also empowered to revise its decision on grounds of clear and unmistakable error. The Board may undertake review on grounds of clear and unmistakable error on the Board’s own initiative or at the request of the claimant.

Claimants for veterans’ benefits who believe BVA made fac-

tual or legal errors in deciding their claims may appeal to the United States Court of Appeals for Veterans Claims (CAVC or Court). The Court may affirm or reverse the BVA decision, or remand for further action. The landmark legislation enacted in 1988 that subjected BVA decisions to the scrutiny of an independent court has necessitated positive reforms in BVA decision-making. Because the Board's decisions must be justified with an explanation of the factual findings and legal conclusions and because VA must defend its decisions in court, denials that go against the weight of the evidence or law have declined. The Board allows and remands substantially higher percentages of appeals than it did before judicial review.

During 2004, 2,234 claimants appealed to CAVC. The Court decided 1,780 cases, with an average processing time from filing of the appeal to disposition of 392 days. Of that total, 1,087 cases, or 61 percent, were either reversed/vacated and remanded or remanded because of some substantive error or procedural defect. This reflects a high error rate among those BVA decisions appealed to the Court.

The DAV's judicial appeals representatives complain that the Board, with increasing frequency, is deviating from the Court's orders reversing and/or remanding cases with specific instructions. The Board's failure to adhere to the Court's orders is blatantly unlawful. The Board's defiance of the Court's mandates breaks down the order and discipline imperative in appellate systems where inferior tribunals are legally bound to adhere to the orders of superior tribunals.

During fiscal year (FY) 2004, 108,931 new notices of disagreement were received by VA, 49,638 appeals were perfected and added to BVA's docket, 39,956 cases were physically transferred from agencies of original jurisdiction to BVA, and the Board decided 38,371 cases. The Board began FY 2004 with 27,230 cases pending before it and ended the year with 28,815 cases pending. Accordingly, the number of new appeals added to the Board's docket during the year exceeded the number of cases it decided by 11,267, and the number of new appeals added to the Board's docket exceeded the number of cases transferred to the Board for a decision by 9,682. The Board decided 1,585 fewer cases than it received from field offices.

At the end of FY 2004, there were more than 161,000 cases in field offices in various stages of the appellate process, including the 31,645 on remand. Some of these appeals will be resolved at the field office level, but about three-quarters of them will come before the Board. At the end of March 2005, there were 51,508 cases on the BVA docket.

During FY 2004, the average time for resolving an appeal, from the filing of the notice of disagreement to the date of the decision was 960 days. Of this total, 734.2 days was the average time an appeal was pending in the field office, from the notice of disagreement to the transfer of the case to BVA, with an average of 225.6 days from the date of receipt of the case at BVA to the date of the decision. During FY 2004, the average number of days an appeal was pending in the New York City VA regional office before being transferred to BVA was 1,978.7 days, with 1,707.5 of those days representing the time after the appeal was perfected and the case was ready for transfer. For a New York case, the average total processing time for an appeal during FY 2004 was 2,136.7 days, almost 6 years. Nine VA regional offices exceeded 1,000 days for the average time an appeal was pending at the field office. As of March 31, 2005, the average total days for cases pending in the field was 832.8 days and the average time at BVA was 202.2 days. Of course, for those cases remanded, the total processing time is considerably longer. In FY 2004, an additional 155.6 days were added to the total processing time of appeals for the time the case spent at BVA the second time following the remand, and this does not include the number of days the case was on remand at the field office. During FY 2004, 7,140 cases were returned to the Board following remands. The remands took an average of 22 months. As noted, there were 31,645 cases on remand at the end of 2004. Of the 38,371 cases decided by BVA in FY 2004, approximately 21 percent had been previously remanded. With these long processing times, far too many disabled veterans die before their appeals can be decided. Three obvious conclusions follow from these numbers: (1) most of the delay in these unreasonably protracted appeals processing times is at the field office level, (2) far too many cases must be remanded more than once, and (3) multiple remands add substantially to the workload of BVA.

The Board allowed 17.1 percent of the cases it decided during FY 2004. Approximately 24 percent of those allowed cases had been previously remanded. The Board remanded 56.8 percent of the cases it reviewed during FY 2004. Of those remanded cases, 18 percent had been remanded previously, suggesting that the field office did not fulfill the Board's instructions in the remand order. Together, the allowed and remanded cases represented 73.9 percent of the Board's total case dispositions in 2004. Denials amounted to only 24.2 percent of the total dispositions. In addition to noting the high percentage of cases remanded multiple times, three conclusions can be drawn from these percentages: within these appealed cases, (1) agencies of original jurisdiction have denied many meritorious claims, (2) agencies of original jurisdiction have denied many cases without proper record development, and (3) only a relatively small percentage of these ap-

pellants had unwarranted appeals.

Because of the large volume of appeals, the BVA is experiencing some shortage of storage space for claims files. The Board is in the beginning stages of a planned move to more suitable office space, which will include more storage space. Under the timetable in the plan, BVA will relocate in FY 2007.

Since the expiration of the former Board Chairman's term in October 2004, the Board has been without a chairman. Strong leadership and clear direction is needed at this level to ensure the Board maintains its independence from other elements of VA.

Additionally, the Board has suffered reductions in its staffing levels in the past few years. Despite increasing workloads, the President's FY 2006 budget again calls for a further decrease in staffing from 440 fulltime employees (FTE) to 434 FTE. This would be down from 455 FTE in FY 2001. If future backlogs and delays in appellate processing are to be avoided, BVA must have the additional resources necessary to meet this increasing workload.

In August 2001, VA proposed to amend the Board's regulations to enable the Board to perform record development itself and make a decision on that evidence rather than remand the case to the agency of original jurisdiction for these purposes. For several reasons related to unfairness and inefficiency, the DAV urged VA not to issue a final rule to authorize this practice. We also noted that such a rule would be unlawful because it would deprive claimants of the statutory right to have a decision by VA and one administrative appeal from that decision. The DAV proposed an alternative in which a special unit of Veterans Benefits Administration (VBA) personnel in Washington could perform the remand development and make a new decision on the additional evidence. This would be a shortcut to avoid the delay of a remand to the regional office. The goal of speeding up the process could be accomplished without any denial of due process for the claimant. VA brushed aside our objections and recommendations and issued a final rule for this purpose in January 2002. To handle this work, BVA created its Evidence Development Unit, which began operations in February 2002. The DAV, joined by three other organizations, challenged this rule in the United States Court of Appeals for the Federal Circuit. In its May 1, 2003, decision, the Federal Circuit invalidated the rule as unlawful. As a result, VA created a special VBA unit, the AMC, to perform remand functions.

The AMC develops and decides approximately 96 percent of the BVA remands. The issues involved in the other 4 percent are

more appropriately handled by the field offices. Although the average time a case was in remand status during FY 2004 was 22 months because a portion of the cases were old ones remanded to field offices, the portion of the remanded cases that were developed and decided by the AMC were on remand an average of approximately 203 days. As of April 23, 2005, the average days a case is on remand before the AMC had more than doubled, to 412.6 days. The AMC currently completes work on an average of 231 cases a week, and 20,970 cases were assigned to AMC as of April 25, 2005.

This backlog resulted from the bulk transfer of approximately 9,000 cases from the Board to the AMC in the first quarter of FY 2004. These were cases in which further development was pending at the Board. Of course, the AMC had both the responsibility to develop and adjudicate these cases. In the beginning when the AMC was first organized, it had to cope with new processes and adjudicators, and it was understandably not up to full efficiency. As a consequence, cases began to back up.

Because the volume of work at the AMC was higher than expected, VBA developed a plan in December 2004 to have three VA regional offices do a portion of the remands. These offices are located in Huntington, West Virginia; St. Petersburg, Florida; and Cleveland, Ohio. Initially, the plan was that cases already developed and ready to adjudicate would go to the Huntington and St. Petersburg offices. Huntington was expected to adjudicate and authorize awards for 300 cases per month. St. Petersburg was expected to adjudicate and authorize 500 cases per month. Cleveland was expected to develop, adjudicate, and authorize 600 cases per month. The Huntington and St. Petersburg offices found that some of the cases they received from the AMC were not actually ready to adjudicate. These offices began to undertake development also. The AMC currently sends 1,300 cases a month to the AMC teams at the three regional offices.

Our DAV representatives at BVA observed that some of the earlier cases returned to the Board from the AMC were not developed in compliance with the remand orders. However, with AMC employees gaining experience, the quality of development has improved. The AMC is viewed as an improvement over the prior procedure in which all cases were remanded to agencies of original jurisdiction because cases are more strictly controlled and not left to languish in field offices for years as too often happened before. Our representatives at the AMC also report that AMC adjudicators are granting the benefits sought in many of these appeals.

When the BVA allows an appeal, it returns the case to the AMC rather than the agency of original jurisdiction to effectuate the

award of benefits. The case often must go to the AMC because the appeal also involves a remanded issue. A major complaint is that the AMC delays the award of benefits on the allowed portion of the appeal for an average of 90 days. Even where the case involves no remanded issue, the case is sent from BVA to the AMC for the award of benefits, and this results in unnecessary delay. In such instances, the case should be returned to the agency of original jurisdiction for a prompt award. Many of these claims have been pending for years.

Our St. Petersburg DAV office reported that one troublesome problem experienced by the AMC team there is the receipt of mail from the Washington AMC that had been received while the claims file was at the AMC but not entered into the claims folder. The AMC forwards this mail to the AMC team in St. Petersburg many months later, sometimes after the case has already been adjudicated and readied for return to BVA. Apparently, this has happened in a noticeable number of cases.

Currently, VBA has 134 FTE devoted to the AMC and its three outstations. The AMC has 87 FTE. St. Petersburg has 25 FTE, Huntington has 8 FTE, and Cleveland has 14 FTE devoted to their AMC Resource Units. If the BVA remand rate remains at or near 50% of its dispositions, it is projected that VBA will need to increase its staffing for this activity to 145-150 FTE in FY 2006.

Focus on the BVA and the AMC alone does not present a complete picture of the effectiveness of VA's appellate processes. The timeliness and propriety of actions on appeals by agencies of original jurisdiction in preparing the case for BVA review and in completing remand actions after BVA review account for much of the overall appellate processing time and necessity to rework the case. The available data show the error rates in appealed cases are high and that the process takes an inexcusably long time, thereby delaying disability and other benefits for many veterans with meritorious claims and immediate needs. The problem of appeals languishing in regional offices for years is not a new one. The responsible VBA officials need to take more decisive action to correct this problem. Board officials need to take the necessary steps to reduce error rates in BVA decisions and to ensure binding court mandates are carried out. With recent increases in the appellate caseloads and no corresponding increase in staffing, timeliness at BVA and the AMC is likely to suffer even more. Congress needs to address BVA staffing more seriously.

We appreciate the Subcommittee's interest in these issues, and we appreciate the opportunity to provide you with the DAV's views. We hope our views will be helpful to the Subcommittee.

Questions for the Record
Honorable Jeff Miller, Chairman
Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs
May 5, 2005

**Hearing on Operations of the Board of Veterans Appeals and
the Appeals Management Center**

Question 1: The Appeals Management Center (AMC), in conjunction with the Board of Veterans' Appeals (BVA), has taken steps to improve appeals processing times through the joint Remand Reduction Project. Please explain in further detail what the Veterans Benefits Administration (VBA) is doing to reduce the number of "avoidable remands."

Response: In July 2004, the Deputy Secretary tasked VBA and BVA to study the common causes of remands and to develop a plan to reduce, to the extent possible, those remands that are avoidable. VBA and BVA submitted a joint plan to the Deputy Secretary in November of 2004.

The major VBA goals are as follows:

- To improve notices required under the Veterans Claims Assistance Act of 2000, specifically to ensure that a compliant notice is sent for the issues claimed as required by law.
- To improve handling of examinations, specifically to ensure that examinations and opinions are ordered when needed and that the examinations are sufficient for the purpose ordered.
- To improve handling of record requests, specifically to ensure that pertinent and properly identified records are requested and that follow-up requests are made in accordance with the law.
- To improve attention to due process.

The major BVA goals are:

- To reduce the need for due process remands, such as asking for waiver of initial regional office (RO) consideration of evidence submitted directly to BVA, and by enforcing the requirements for missed hearings before the Board.
- To reduce court remands through training on complex areas of law.
- To clearly identify any RO deficiency and eliminate boilerplate or generic remand development paragraphs that force ROs to do work that is not related to an identified deficiency.

Highlights of actions to date:

- A new veteran's appeals control and locator system (VACOLS) protocol was developed to record reasons for remands. The protocol distinguishes between remands due to VBA error and remands based on BVA's independent review of the record.
- BVA issued a Chairman's memorandum reinstating waivers to permit BVA review of new evidence in the first instance.
- VBA changed claims procedures to more thoroughly document failed attempts to secure federal records (e.g., Social Security records) and failed attempts to verify post-traumatic stress disorder (PTSD) stressors.
- In February 2005, VBA and BVA conducted a joint broadcast, with participation from the Deputy Secretary and BVA and VBA leadership, on the importance of reducing remands. Additional broadcasts have been developed and aired on topics addressing issues related to remands, such as preparing medical examination requests.
- VBA fielded a completely revised version of a training and performance support system (TPSS) computer-based training module on "Certifying a Case to the BVA" in March 2005. This training is mandatory for all RO appeals teams.
- VBA established a mailbox for remand questions from the field. It also created an intranet site with a management reports function allowing an RO to review the errors on its remands.
- VBA incorporated appellate performance targets in the RO directors' performance standards for fiscal year 2005.
- The VBA resource allocation model emphasizes the importance of appeals. Stations with better performance in their appellate work are allocated more resources than stations with poor performance in this area. This allocation model ensures that stations strive to meet their monthly targets in the appellate workload.

Planned actions: The ongoing review and monitoring of remand data will allow VBA to determine the impact of current improvements as well as identify future trends. VBA will continue to develop and implement measures to ensure avoidable remands are eliminated to the greatest extent possible.

Question 2: The AMC has established a strategic goal of 230 days on average to complete a remand. When does the AMC believe it will achieve this strategic goal? What is the plan for achieving the goal?

Response: Currently the Appeals Management Center (AMC) is completing remands in an average of 435 days. AMC's workload and timeliness have been affected by the backlog of approximately 9,000 cases that were pending development at BVA at the time of the AMC's initial establishment. These cases were subsequently remanded by BVA to AMC for development. This additional workload served to increase the AMC's first-year workload volume by 50 percent – from approximately 18,000 remands to over 27,000 remands – and time to process increased as a result.

Many of these cases are now becoming ready for decision. The resource centers in St. Petersburg, Huntington, and Cleveland are providing assistance with the approximately 3,500 cases that are currently ready to rate. VBA's efforts to reduce the backlog of remanded cases are showing success. The inventory of pending remands at AMC has dropped from 24,000 at the beginning of fiscal year (FY) 2005 to 20,000 as of June 2005. VBA's joint plan with BVA to reduce the number of cases being remanded is also achieving good results. Over the last few months, the number of cases remanded by BVA has been reduced to about 1,000 per month – nearly a 50 percent reduction from the levels of the past two years. The goal is to reduce the inventory to 18,000 by the end of FY 2005 and to 12,000 by the end of FY 2006. Once the inventory is reduced to this 12,000 level, it is anticipated that the goal of 230 days on average to complete a remand can be met.

Question 3: Mr. Wilson explained that the 230 day strategic goal for processing appeals remanded to the Appeals Management Center was developed, in part, using statutory or regulatory requirements that prevent VA from adjudicating a claim before evidence is received or the period expires. Please provide a summary of the statutory and regulatory requirements that are currently built into the claims process, from the filing of the initial claim through final disposition at the Board. Where appropriate, please provide the legal citation of the requirement.

Response: The timeline of the claims process begins with the filing of the initial application. If the application is incomplete, VA must notify the claimant of the information necessary to complete the application. 38 U.S.C. § 5102(b). A claimant has up to 1 year to submit that information. 38 U.S.C. § 5102(c)(1). Generally, upon receipt of a complete or substantially complete application, VA provides the claimant with notice of the information and evidence necessary to substantiate the claim. This notice is required by the portion of the Veterans Claims Assistance Act (VCAA) that is codified at 38 U.S.C. § 5103(a), and incorporated in VA regulation at 38 C.F.R. § 3.159. The claimant has a year from the date the notice is sent to respond. 38 U.S.C. § 5103(b). A may decide the claim within that one-year period, but if the claimant subsequently submits relevant

evidence within that one-year period, VA must readjudicate the claim. 38 C.F.R. § 3.159(b). Although these regulations permit VA to decide the claim after 30 days if the veteran has not responded to the notice, VA in practice waits at least 60 days to take action. For requests for information or evidence to support a claim subsequent to this notice, VA administrative procedures allow a claimant 30 days to respond.

Certain regulatory and procedural requirements govern the steps of the development process itself. VCAA requires that VA make reasonable efforts to obtain non-federal records and exhaustive efforts to obtain federal records to support a claim. 38 U.S.C. § 5103A(b)(1). VA regulations issued pursuant to VCAA state that reasonable efforts to obtain non-federal records will generally consist of an initial request for the records and, if the records are not received, at least one follow-up request. 38 C.F.R. § 3.159(c)(1). The VCAA requires that VA continue in its efforts to obtain federal records until the records are obtained unless it is reasonably certain that the records do not exist or that further attempts would be futile. 38 U.S.C. § 5103A(b)(3). Certain records (including private medical records, Social Security records, stressor verification records from Department of Defense's (DoD) center for unit records research (CURR), archived records, radiation dose reconstruction information, etc.) may take a long period of time to obtain. VCAA requires that VA provide an additional notice to the veteran if it was unable to obtain any of the records it has sought. 38 U.S.C. § 5103A(b)(2). The veteran is given 30 days to respond to that notice. In many cases, a medical exam and/or medical opinion is required. 38 U.S.C. § 5103A(d). Such exams take, on average, 35 days to obtain.

After a decision on a claim is promulgated, the claimant has up to one year to file a notice of disagreement with that decision. 38 U.S.C. § 7105(b)(1); 38 C.F.R. § 20.302. Following receipt of a notice of disagreement, a Statement of the Case will be issued. 38 U.S.C. § 7105(d)(1); 38 C.F.R. § 19.26. By statute, the appellant has 60 days to file a substantive appeal in response to the statement of the case. 38 U.S.C. § 7105(d)(3). VA regulations alternatively allow the appellant to file a substantive appeal before the end of the one-year period from the date of the decision being appealed. 38 C.F.R. § 20.302. Following receipt of a substantive appeal, the appeal is certified to BVA. If additional evidence is submitted thereafter, a supplemental statement of the case (SSOC) is issued to the appellant. 38 C.F.R. § 19.31. The appellant has 60 days to respond to the SSOC. 38 C.F.R. § 20.302. Many cases include multiple SSOCs. The claimant may request personal hearings at the regional office at any time during this process. 38 C.F.R. § 3.103(c).

Statutory or regulatory requirements affecting the timeliness of appeals processing at BVA, once the appeal has been certified and the records transferred to BVA, are designed to provide a fair and orderly process for the order of consideration of appeals and the provision and scheduling of hearings, and to ensure due process is provided to appellants. These provisions include the following:

Appeals must be considered and decided in regular order according to their place on the docket, except as advanced on motion for sufficient cause, including serious illness, severe financial hardship, or advanced age. 38 U.S.C. §7107(a), 38 C.F.R. §20.900.

BVA may not decide an appeal without first providing the appellant with an opportunity for a hearing. 38 U.S.C. §7107(b). Hearings may be held at BVA's principal location, at a facility served by a regional office, or, depending on the availability of resources and as provided by the Secretary, by electronic or other means. 38 U.S.C. §7107(d)(1), (e); 38 C.F.R. §20.700. Hearings at regional offices are scheduled in accordance with the case's place on the docket in relation to other cases in that area in which a hearing was requested, although cases may be advanced on the hearing docket for sufficient cause on the same basis as all appeals. 38 U.S.C. §7107(d)(2), (3). Similar procedures are followed for other forms of hearings. See 38 C.F.R. §§20.702, 20.703, 20.704. The record may be left open following the hearing, usually for no more than 60 days, to permit the appellant to obtain and submit additional evidence. 38 C.F.R. §20.709. A record of the hearing must be prepared. 38 C.F.R. §20.714. In addition, an appellant's representative may submit an "informal hearing presentation" in support of the claim. 38 C.F.R. §20.700(d).

BVA decisions must be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law. 38 U.S.C. §7104(a).

If BVA determines that further evidence, clarification of evidence, or correction of a procedural defect is necessary to properly decide the appeal, it must remand the case to the agency of original jurisdiction for necessary development or correction of the defect. 38 C.F.R. § 19.9.

Where necessary to fairly resolve the appeal, BVA may obtain advisory opinions from independent, VA and Armed Forces Institute of Pathology medical experts, and legal opinions from VA's Office of the General Counsel. 38 U.S.C. §7109; 38 C.F.R. § 20.901. When such opinions are received, a copy is furnished to the appellant or his or her representative and a period of 60 days from the date of that action is provided for a response. 38 C.F.R. § 20.903(a). Similarly, a 60-day response time from the date of notice is provided where BVA obtains certain evidence or applies law that was not considered by the originating agency. 38 C.F.R. §20.903(b), (c).

Finally, timeliness may be affected by a variety of motions and requests, such as motions for the withdrawal of services by a representative, 38 C.F.R. §20.608(b), motions for a subpoena, 38 C.F.R. §20.711, special notice provisions in contested claim cases, 38 C.F.R. §20.713, motions for correction of a transcript, 38 C.F.R. §20.716, motions for a new hearing, 38 C.F.R. §20.717, and motions for a request

for a hearing, submission of new evidence or change in representation after 90 days from the date of certification and receipt of records by BVA. 38 C.F.R. §20.1304.

Remand orders are prepared by attorneys at BVA and are tailored to the unique medical and legal issues of each appealed decision. They are based on each attorney's judgment of what additional evidence or procedures are needed before a decision can be made on the appeal.

However, some broad generalizations do apply. For example, most remands require development actions to be completed sequentially. A normal remand order will require the collection of additional private or VA treatment records as well as the completion of a new examination at a VA medical center. Normally, the collection of additional records is required to be completed prior to the scheduling of the VA examination. On average, each remand has at least one development step that must be completed prior to a VA exam.

Based on current remand trends, it is estimated that an average remand requires two separate development steps, which may take as long as 60 days each to complete. Certainly, some respondents will respond quicker than 60 days. However, these situations are offset by the instances where information is not received within 60 days. Overall, assuming 10 days are needed to initiate each development stage, it could take 140 days to collect the information required for the average remand.

Following the collection of the required evidence, the remand is sent to a decision maker. The goal of the Appeals Management Center (AMC) is to have a decision ready within 10 days of the time the case is sent to a decision maker. The claimant's representative is allowed an opportunity to review the draft decision before it is promulgated. Following review by the representative, the decision is promulgated and the claimant notified within 10 days. Therefore, these steps in the decision and notification process can take an average of 20 days.

If the benefit sought cannot be granted in full, the claimant is provided 60 days to review the decision before the appeal is recertified to BVA for further consideration. This 60-day period is in accordance with 38 C.F.R. §20.302. Following conclusion of this 60-day period and assuming the claimant does not provide further evidence, the appeal is recertified to BVA within 10 days.

In summary, the length of time needed to complete the average remand is as follows:

Stage	Days to complete	Reference
1. Initiate 1 st stage development	10	AMC Goal
2. Receipt of development	60	VA Manuals M21-1 and M21-1MR
3. Initiate 2 nd stage development	10	AMC Goal
4. Receipt of development	60	VA Manuals M21-1 and M21-1MR
5. Time to make decision	10	AMC Goal
6. Time to notify claimant	10	AMC Goal
7. Review period if denied	60	VA Manuals M21-1 and M21-1MR
8. <u>Re-certify to BVA</u>	10	<u>AMC Goal</u>
Time to Complete Remand		230

Question 4: During the course of the hearing, the issue of the claimant's record being open versus closed was mentioned as a cause of delay. Please explain how an open record affects timeliness under current law. Also, please address how closing a record could improve timeliness and what, if any, substantive rights would be affected by closing the record.

Response: The concept of "closing the record" on appeal was mentioned by one VA panelist as a possible means of improving the timeliness of appeals resolution. Currently, an appellant may submit evidence, which VA must then consider, at any time during an appeal. The only point of closure is that the appellant is given 90 days to submit additional evidence following mailing of notice to the appellant that the appeal has been certified to BVA. 38 C.F.R. § 20.1304(a). After that time, evidence submitted may be considered in that appeal only on motion and for good cause shown.

If the record in an appeal were closed to the submission of new evidence at some point in time, that appeal should more quickly and efficiently be resolved. This in turn would enable additional resources to be devoted to processing other claims and appeals, resulting in overall improvement in timeliness.

For example, under current law, in order to perfect an appeal to BVA, the appellant must file a substantive appeal within 60 days of the issuance of a statement of the

case (SOC) by a RO. Once this is accomplished and all development is otherwise completed, the RO should be ready to certify the case and transmit the record to BVA. However, the appellant may still submit additional evidence to the RO. When this happens, the RO is required to issue a supplemental statement of the case (SSOC) to inform the appellant if there have been any material changes in, or additions to, the information that was contained in the SOC. The appellant then has 60 days to respond to the SSOC. In some cases, evidence is submitted in a piecemeal fashion, requiring issuance of multiple SSOCs, which significantly delays the resolution of that appeal. If the record were to be closed to the submission of new evidence at some point, this delay might be averted.

VA is carefully considering all available options to improve the adjudication system, including the possibility of closing the record at a time earlier than is permitted under current law. At this point, VA is not proposing any statutory changes in this area. If VA does in the future, it will be with the goal of providing the best possible service to our Nation's veterans and their families.

Questions for the Record
Honorable Lane Evans
House Committee on Veterans Affairs
Subcommittee on Disability Assistance and Memorial Affairs
May 5, 2005

**Hearing on Operations of the Board of Veterans' Appeals
and the Appeals Management Center**

Question 1: The number of appeals pending has almost doubled in the last five years. Has VA determined the reasons for the increase?

Response: The growth of the appellate workload can be attributed in part to the increased number of disability decisions rendered. In fiscal year (FY) 2001, 481,117 decisions were completed, versus 703,254 in FY 2004 (an increase of 46 percent). Over the same time period, the appeal rate also increased from 8 percent in FY 2001 to 13 percent in FY 2004. Additionally, judicial decisions and regulatory changes often lengthen the time required for an appellate decision as a result of additional issues which may be raised in response to those decisions or changes.

While the number of appeals has increased, so too have the number of actions Veterans Benefit Administration has taken in response to these appeals. In FY 2001, we processed over 47,600 statements of the case and supplemental statements of the case. This number increased to more than 127,000 in FY 2004, an increase of 167 percent.

Question 2: It appears that some regional offices have a much larger percentage of claims remanded or reversed than other regional offices. Has VA done an analysis of offices which have high percentages of claims reversed or remanded?

Response: To review cases remanded by the Board of Veterans' Appeals (BVA), the Compensation and Pension Service has established an Appeals Quality Review Staff (AQRS) to:

- determine why the issue was remanded,
- analyze information gathered from the reviews and identify training needs for regional office (RO) employees, and
- convey results of the analyses in a way that helps the ROs understand the reason for the remand, including any RO remand trends.

AQRS reviews a sample of remands and maintains a review database. Reports from this database are available to each RO. Data is captured about the ROs' performance in three areas: 1) duty to notify; 2) duty to assist; and 3) due process. The reviews identify whether the case was remanded due to an error

by the RO or due to a reason beyond the control of the RO, such as a change of law or submission of additional evidence by the veteran after the file was sent to BVA.

Question 3: If the AMC is addressing development deficiencies from regional offices, how is feedback provided to regional offices so that deficiencies are not continued?

Response: The main source of data regarding errors or deficiencies in appellate processing is veterans appeals control and locator system (VACOLS), a BVA system used by both BVA and VBA to track appeals data. The information contained in various VACOLS reports allows managers to spot error trends and then plan training accordingly to address those issues.

As discussed in response to question 2 above, the Compensation and Pension Service established a quality review unit co-located with the Appeals Management Center and maintains a review database available to all regional offices. Additionally, errors determined to be egregious (i.e., failures to follow legal, regulatory, or procedural requirements that are obvious, clear, and unmistakable) are returned to the regional office of jurisdiction for correction and to complete action on the remand.

Regional office managers (including the director, the veterans service center manager, and the appropriate supervisor) are responsible for reviewing the available appeals data and determining training needs. To help ensure that the appellate workload is appropriately addressed, the directors' performance standards include elements such as the number of remands pending, the remand rate, and the timeliness of appeals.

Question for the Record
Honorable Ginny Brown-Waite
Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs
May 5, 2005

**Hearing on Operations of the Board of Veterans Appeals and
the Appeals Management Center**

Question: It is my understanding that the BVA uses 4 different case management systems and that these systems are not compatible, making information sharing difficult. Further, veterans who call about their case status and are not specific in their question can get different answers every time depending on the system the employee is currently using. What, if anything, is being done to integrate these systems and increase the overall efficiency of claims management?

Response: Board of Veterans Appeals (BVA) uses a single case management system, the veterans appeals control and locator system (VACOLS), to track appeals. Appellate records are created in this system by Veterans Benefit Administration (VBA) field offices, or Agencies of Original Jurisdiction, once a Notice of Disagreement has been received in response to an unfavorable administrative determination. BVA responds to status inquiries based on the information in VACOLS. In doing so, BVA relies on the accuracy of the employees throughout VBA and BVA who are responsible for updating VACOLS and maintaining the integrity of the system.

A number of BVA employees in Washington, D.C., have limited access to a VBA tracking system known as the control of veterans records (COVERS). The COVERS system allows BVA employees to track the location of claims folders that have not yet been certified and transferred to BVA or that have been transferred back to a VBA facility following appellate review and issuance of a BVA decision.

When a claims folder arrives at BVA, both COVERS and VACOLS are updated to reflect the current location of the claims folder. However, if a large number of cases are received at once, BVA cannot immediately complete the VACOLS docketing process because of the time it takes to review and enter a variety of data pertaining to each appellant into the system. COVERS can be updated within one business day, because the only data entered is the updated current location. This update is easily accomplished through the use of a scanning device. During this relatively brief period before VACOLS is updated, there may be a discrepancy between the two systems concerning the precise location of a claims folder. In this brief period, Board employees, relying on VACOLS data may provide inexact information to veterans or other applicants as to the exact location of the claims file.

While COVERS is available to a number of employees in Washington, D.C., it is not available at the present time to the employees, located in Wilkes-Barre, Pennsylvania, who answer the BVA status inquiry hotline. These employees must rely solely on the information contained in VACOLS when responding to status inquiries because the current version of COVERS will not operate in Wilkes-Barre or most non-VBA locations. VBA is presently developing the next release of COVERS so that it will be functional throughout all VA facilities. A firm date for that COVERS version has not been given by VBA. For this reason, BVA is working on a VACOLS programming enhancement that will allow us to quickly and easily update VACOLS to reflect that a claims folder has been received at BVA, without having to administratively docket the case at that time. This is a short-term enhancement that will allow BVA to provide more timely and precise information to veterans and other claimants whose cases have been transferred to BVA.

A possible long-term solution that has been considered for resolving differences between COVERS and VACOLS is to combine the two systems together into a single application. For technical reasons, it has been determined that this would be infeasible. Programmers from each organization, however, are working on an enhancement that will allow BVA employees to simultaneously update claims folder locations in VACOLS and COVERS. This long-term solution will promote efficiency and allow both systems to precisely reflect the location of claims folders when they are received at BVA and when they leave BVA.

There are two other non-BVA systems that are used by some Board employees in Washington, D.C., for handling certain tasks. One of those systems is the VBA benefits delivery network (BDN) system. This system is used to verify an appellant's mailing address when BVA correspondence or a decision is returned as undeliverable by the United States Postal Service. BVA has read-only access to this system.

The other system is the database used by VA's Office of the General Counsel to track claims folders and other information when a Board decision is appealed to the United States Court of Appeals for Veterans Claims (Court). For Court remands, BVA employees review the GC Laws Case and Time Tracking System to determine whether claims folders are still located at the General Counsel's office or if the folders have been transferred back to VBA. The Board has read-only access to this database.

Question for the Record
Honorable Tom Udall
House Committee on Veterans Affairs
Subcommittee on Disability Assistance and Memorial Affairs
May 5, 2005

Hearing on Operations of the Board of Veterans' Appeals
And the Appeals Management Center

Question: The GAO Report titled "Board of Veterans' Appeals has Made Improvements in Quality Assurance, but Challenges Remain for VA in Assuring Consistency," states that "Although VA has much left to do regarding consistency in decision-making, it has begun efforts to understand the reasons behind one indication of inconsistency: the wide variations from state to state in the average compensation payment per veterans." What is the average compensation payment per veteran in New Mexico? How does this compare with other states?

Response: According to the Department of Veterans Affairs (VA) Office of Inspector General's Review of State Variances in VA Disability Compensation Payments (Report No. 05-00765-137, May 19, 2005), in fiscal year (FY) 2004 the average annual compensation payment per veteran in New Mexico was \$12,004, which was the highest among the 50 states. The national average annual payment for FY 2004 was \$8,378. For veterans who began receiving disability compensation in FY 2001 through FY 2004, New Mexico's average annual amount per veteran remains the highest of the 50 states.

Eastern Area**Baltimore**

1. VA Form 9 date: 12/28/1988

The status update was written without the claims folder available. Prior to recertification to the Board of Veterans Appeals (BVA), Baltimore Regional Office rendered a decision continuing the previous denials of some issues but also issuing a partial grant of a 100 percent service connected evaluation with special monthly compensation (SMC) at the housebound level effective July 10, 1996. Case was returned to BVA on April 21, 2005.

Boston

2. VA Form 9 date: 03/19/1990.

The evidence in the claims folder indicates there was a delay in initiating the development on the remand. Veterans Claims Assistance Act (VCAA)-compliant development included stressor verification request from the United States Armed Services Center for Unit Record Research (USASCURR) was required. Development has been completed, and a Supplemental Statement of the Case (SSOC) was issued; file was transferred back to BVA 8/4/05.

Cleveland Tiger Team

The Tiger Team's responses are included in the AMC Resource Center report.

Indianapolis

3. VA Form 9 date: 3/2/1990

The original remand issue from 1990 was dismissed by the Court; however, other appeals were pending at the time and were intertwined in the VACOLS record. A subsequent Form 9 was received on 6/19/95 for other appeals. These appeals have been remanded for VCAA, an examination which complies with *Deluca v. Brown*, and Independent Medical Opinion considered by BVA without Agency of Original Jurisdiction (AOJ) consideration. Election letter regarding the Decision Review Officer (DRO) process was sent to the veteran, who elected the traditional appeals process. Form 9 was received and a Statement of the Case (SOC) was prepared; veteran elected a BVA hearing in Washington DC, so file was returned to BVA on 8/13/05.

Philadelphia

4. VA Form 9 date: 06/21/78.

The SSOC of 04/08/81 dropped one of the two remaining issues on appeal, and control was lost on this case until 07/15/2003. SSOCs were issued on 07/15/03 and 09/23/04, but they did not identify the issue that was dropped from the 04/08/81 SSOC. The case has been remanded for VCAA compliance on the two issues from the 02/05/79 remand and for preparation of an SOC on two other issues for which no SOC was sent. A VCAA letter was issued on 05/11/05 along with a request for Social Security Administration (SSA) disability records, and a VA exam was done. An SOC and an SSOC were issued on 8/31/05.

Prepared by OFO

Pittsburgh

5. VA Form 9 date: 12/7/89.

The original Form 9 was received on 12/7/89, and there has been no lack of activity the past 15 years. Review of the record shows that BVA and the Court of Appeals for Veterans' Claims (CAVC) had the case with them from 1989 through 1996. Due to a combination of inadequate exams and changes in the law (*Manlicon v. West* and VCAA), the case has been to BVA and remanded numerous times. The most recent exams were challenged by the veteran's attorney (4/19/05), because the psych exam was conducted by a psychologist and not a psychiatrist. A new psychiatric exam was conducted, and a psychiatrist concurred in the psychologist's findings. A new orthopedic exam was accomplished 6/13/05, and a new SSOC was prepared 8/24/05. Once the 60-day response period has passed, the case will be recertified to BVA.

New York

6. VA Form 9 date: 06/08/88.

The appeal has been remanded three times for essentially the same reasons. The latest remand was 9/27/00. The issue involves records from the military verifying a helicopter crash, injury, and incident for which the veteran received a Purple Heart. Numerous attempts to obtain the records have been unsuccessful from the sources identified by both BVA and the RO, including the latest PIES response received on 8/17/05. Latest remand also asked for an exam after development, but the veteran failed to report. The VA Medical Center reported that the veteran withdrew his claim, and a letter was sent to the veteran to verify this information. If no reply is received by 8/30/05, a new SSOC will be prepared.

7. VA Form 9 date: 11/14/78.

BVA decision denied the issue on 11/03/80. The veteran's representative filed a motion for reconsideration of BVA decision on 04/03/02. BVA granted motion of reconsideration on 6/18/02 and VACOLS was established by BVA with the VAF 9 date from the initial appeal in 1978. The case was initially developed by BVA but remanded on 8/21/03 following the *Disabled American Veterans v. Principi* (DAV) decision. VARO Huntington then processed a rating and SSOC. However, when the veteran failed to report for an examination, they forwarded the file to New York RO on 3/11/05 due to non-appeal issues also pending. An SSOC was completed on 03/29/05. Following discussion with the service organization, a VA exam was again requested on 8/22/05.

8. VA Form 9 date: 09/02/70.

The issue on appeal had previously been denied by BVA. Veteran reopened in 1991 and BVA granted in 1998. The veteran then appealed effective date and level of special monthly compensation and VAF 9 was received 10/15/99. Following certification of current appeal, the BVA remanded the case on 12/01/03. However, issues involving the private attorney delayed return from BVA to the RO until 3/7/05. VCAA letter was sent 03/22/05 and a VA exam was done 03/31/05. An SSOC was prepared 6/16/05, and the remand was returned to BVA on 9/2/05.

9. VA Form 9 date: 05/14/87.

The initial decision on appeal was the subject of three remands and was resolved by BVA decision of 10/4/01. BVA also remanded the case in accordance with the *Manlicon* decision, because they identified another issue with which the veteran disagreed and an SOC had not been furnished. This issue was addressed and was ready to be returned to BVA when the veteran filed a Notice of Disagreement (NOD) with another issue. A VA examination was requested and a complete grant was issued; the appeals record is now closed.

Newark

10. VA Form 9 date: 1/24/89.

The remand issue is entitlement to an increased apportionment of the veteran's surviving spouse's Dependency and Indemnity Compensation (DIC) award, on behalf of the veteran's child, who was a minor until September 26, 1990. We have received completed financial information (VA Form 26-5655) from the surviving spouse indicating her income and expenses during the period of January 1989 through September 1990. The widow also provided information concerning her hospitalization from January 1989 through May 1989 and indicated her income was not used to defray the cost of her hospitalization. The financial information was reviewed, an SSOC was issued, and the case was certified to BVA on 8/19/05.

Togus

11. VA Form 9 date: 9/21/89.

This is one of eight court remands concerning the issues of rheumatoid arthritis and intervertebral disc syndrome. There were other issues which have been resolved. The veteran has a 100% evaluation and is receiving statutory housebound benefits. Togus had scheduled the veteran for an examination based on the latest remand which cited stale evidence; however, Appellate Litigation requested the file, and the claims file was transferred to them for review on 11/22/04. The file was returned to Togus in July, 2005. A VA exam was requested, which was done on 7/26/05; however, as of 8/18/05, the dictation from the doctor is not complete.

Southern Area

Atlanta RO

12. VA Form 9 date: 10/21/88.

On 11/18/99, the BVA made a decision which denied the conditions on appeal. CAVC order dated 5/4/01 vacated the above decision. CAVC Remand dated 11/19/03 ordered VA to obtain additional medical treatment records and a VA examination. Development was initially conducted by BVA. The RO issued an updated VCAA letter to the veteran on 3/7/05 on all issues. An additional VCAA letter was sent 4/29/05. Veteran filed a motion for reconsideration of the BVA decision of 11/18/99. A VA examination was conducted on 3/23/05. An SOC was issued on 5/16/05 and an SSOC was also issued on 5/16/05. New evidence was received, a VA exam was ordered, and a Rating Decision on non-appeal issues was completed on 8/22/05. An SSOC was issued on 8/23/05; following the 60-day reply period, the case will be certified to BVA.

13. VA Form 9 date: 07/10/89.

In April 1991, BVA remanded the case for issuance of an SSOC. In November 1995, the CAVC remanded part of the BVA decision. BVA remanded the case in July 1996 to the RO for additional development. In December 1998, BVA denied the claim. In March 2001, the CAVC vacated the December 1998 BVA decision and remanded the case for VCAA. The case was remanded on 9/24/01. A letter was sent to veteran requesting additional treatment information on 10/11/01. A VCAA letter was sent to the veteran on 12/20/01 (a more updated VCAA letter has recently been sent). A VA examination was conducted on 5/17/02. There was a delay in processing because BVA recalled the file on 2/5/03 to make a decision on 2/5/03 which denied the appellant's motion that the November 1974 BVA decision was Clear and Unmistakable Error (CUE). VAMC treatment reports have been received through 03/05. An SSOC and Rating Decision for a partial grant were issued 5/16/05. On 7/18/05, a new NOD was received on a separate issue, and an SOC was prepared on 8/22/05. The remand issue is ready for certification to BVA, pending disposition of the new SOC.

14. VA Form 9 date: 01/02/90.

BVA had made a final decision on this case in 3/13/96 but the veteran requested reconsideration of that decision and the BVA granted it, then remanded it on 9/25/97. The 11/3/03 BVA remand ordered the completion of an SOC, compliance with VCAA and a determination regarding the type of BVA hearing the veteran wanted. The RO sent a letter on 3/30/04 to comply with the VCAA requirement. There was significant delay in obtaining information regarding active duty for training periods during the veteran's reserve service from the Reserve units or the service department. Another letter was sent on 4/30/04 asking the veteran what type of BVA hearing he wanted. He replied on 6/4/04 that he wanted a hearing with the BVA in Washington DC. The RO issued the SOC on the issue of IU on 7/17/04. The veteran also submitted three separate non-appeal claims for several issues. The RO issued VCAA letters on each of those claims on 2/13/04 and 5/20/04. A VA exam was needed on the non-appeal issues, which was received on 1/12/05. An SSOC was completed on the remand issues on 9/18/04 and a rating on some of the non-appeal issues on 2/22/05. An additional VCAA letter was sent on other non appeal issues on 3/9/05 and a rating was done on those issues on 5/11/05. Additional treatment reports pertaining to the remand issue were received, and the RO issued another SSOC on 5/12/05. The case was returned to BVA on 7/19/05.

15. VA Form 9 date: 4/16/90.

Case was remanded by BVA on 03/30/04 and VCAA letter was sent on 4/19/04. On 8/30/04 another VCAA letter was sent when issues on appeal were misinterpreted as new issues. On 10/20/04 the veteran replied to VCAA by sending in new medical evidence. On 12/27/04, a VA exam was scheduled with a contractor, QTC. On 1/9/05, a letter was sent to the veteran to clarify conflicting documents received as to power of attorney (private attorney vs. service organization). On 2/9/05, an exam was received, but it did not comply with remand instructions. A new VA exam was requested on 7/22/05, and a Rating Decision was made on 8/23/05. Also on 8/23/05, VCAA was sent on an inferred issue raise in the BVA remand. On 8/24/05, an SSOC was issued for the remand issues. Further action will be taken, pending receipt of evidence requested on 8/23/05 and any reply to the recent SSOC, prior to recertification to BVA.

Columbia

16. VA Form 9 date: 03/14/88.

The case was first remanded for radiation dose estimate in July 1990. It was remanded the second time in June 1991 for opinion from the Chief Benefits Director on whether non-malignant thyroid nodular disease resulted from ionizing radiation exposure. The file remained in BVA until September 1994 when it was recalled by the RO due to a new appeal. The file was lost and a reconstructed file sent to BVA again in 1998. C&P service rendered opinion in April 2003 that the thyroid cannot be attributed to ionizing radiation. BVA remanded the claim in April 2004 for development to DTRA for new dose estimates. Appeal is pending new dose estimates from DTRA, which may take up to two years.

17. VA Form 9 date: 04/18/90.

BVA denied the claim in January 1994. COVA vacated the denial in December 1995 and remanded the appeal in 1996 for treatment reports. The claim was remanded again in 1997 for stressor information as well as inadequate examination. BVA denied the claim in 1998. COVA vacated the decision in 2001 and remanded the claim in 2003 for VCAA. The most recent BVA remand dated 11/22/04 directed VBA to ensure that all VCAA notice obligations have been satisfied, to request all medical reports from VA and non-VA medical providers who have provided treatment since February 2004, and to obtain a VA exam to determine whether the condition is present and if so, whether it was caused or aggravated by his service. Remand directives have been satisfied and an SSOC was issued on 8/24/05. Subsequently, the veteran raised additional issues that have been adjudicated and appealed. Pending reply to the SSOC or expiration of the diary period, the appeal will be certified back to BVA.

Jackson RO

18. VA Form 9 date: 04/09/90.

In June 2001 and January 2003, the Court vacated BVA decisions which denied service connection for schizophrenia based on no new and material evidence to reopen the claim. A medical opinion was sent to BVA in June 2004 from a private clinical psychologist, who proffered an opinion linking the veteran's schizophrenia to service. BVA ruled that new and material evidence had been received to reopen the claim and remanded the matter to the RO on 7/17/04 for additional evidence. Service personnel records were received 12/21/04. VA examination reports and medical opinion were received 3/2/05. On 5/11/05, service connection for schizophrenia was granted. This was a total grant of benefits sought on appeal; the appeal is now closed.

Montgomery RO

19. VA Form 9 date: 09/05/89.

The issues on remand involve claims based on radiation exposure. After development, including telephone contact, with the Bureau of Naval Personnel, Retired Records Section, St. Louis, the RO has been unable to obtain the veteran's DD Form 1141 as instructed by the remand. Development for radiation dose information from the Surgeon General of the Navy was not fruitful. On 7/28/05, a new request for radiation dose information was directed to the Navy Bureau of Medicine and Surgery. Once this information is received, the case will then be

submitted to the VA Under Secretary for Health for preparation of a radiation dose estimate. After these steps are completed, the RO will take action either through granting benefits or issuing an SSOC.

20. VA Form 9 date: 02/24/89

Case was certified to BVA on 5/13/05. Since the claims folder is not available to the RO, a response regarding the delay in processing is not possible.

San Juan RO

21. VA Form 9 date: 04/23/87.

This case was remanded on 03/31/05, due to veteran's request for a new personal hearing. A hearing was held on 06/08/05, and the translation and transcription was received from the contractor 8/11/05. A VA exam was obtained on 7/15/05 for a new claim. Once the exam is returned, the new claim and personal testimony will be considered in new decisions.

22. VA Form 9 date: 07/28/88.

This case was remanded on 05/23/03 to request additional medical records and examinations. A hearing was requested by the veteran and was held on 03/16/04. The additional medical records, examinations, and hearing testimony were considered in the SSOC released on 04/14/04. Subsequently, the veteran has submitted additional medical records and a statement indicative of a change in his current representation. A letter was sent to the veteran on 05/13/05, to clarify whether or not he wishes an additional hearing and the change to his current representation; he replied that he does not want a hearing and has revoked his power of attorney. The veteran submitted additional releases, and further development has been initiated for private treatment records on 7/14/05.

23. VA Form 9 date: 12/29/89.

BVA issued a decision to deny service connection for post traumatic stress disorder (PTSD) in 09/2002. The veteran appealed that denial to the CAVC, which in 08/2003 adopted the parties' joint motion to vacate the decision and to remand the case for additional development relative to the VCAA. Additional evidence was obtained from service department and medical records. An SSOC was sent to the veteran on 02/15/05. The veteran's representative submitted additional stressors for consideration and the request for verification for additional stressors was undertaken on 05/05/05. As of 8/18/05, the request is still pending in PIES.

Washington RO

24. VA Form 9 received 8/22/89

The RO lost control of the appeal following the issuance of an SSOC on 12/11/89 until 7/22/03, at which time the veteran was issued another SSOC. The case was certified to the BVA on 9/28/04. On 2/18/05, the BVA rendered a decision on the issue on appeal. However, they also construed a letter received from the veteran on 3/13/03, which had been considered by the RO as a reopened claim for an acquired psychiatric disorder, as an NOD with our 12/3/02 denial of service connection for schizophrenia and a scar on the right leg. This remand was sent to the AMC in 2/05 and was forwarded to the WRO in 4/05 based on *Manlicon* compliance. In

accordance with the BVA remand, the veteran was sent an SOC on 5/11/05 and informed he has the right to submit additional evidence and enlist the support of the VA in obtaining the evidence. The remand issue was resolved on 8/28/05.

Winston-Salem RO

25. VA Form 9 date: 03/29/90.

The appeal was remanded on 10/03/03 to give the veteran VCAA notification and to examine the veteran's back due to the recent change in evaluating conditions of the spine. The veteran's attorney cancelled the requested exam citing the veteran's inability to travel. The RO informed the veteran and his attorney of the option of having a fee basis examination and informed them of the evidence needed to support this type of examination. While the remand was being worked, it was noted that the veteran had an un-adjudicated claim. The veteran's attorney requested several extensions regarding the remand and the pending claim; however, sufficient evidence was not submitted to support a fee basis examination. An SSOC was released on 08/26/04. The pending claim was adjudicated on 01/18/05. The veteran was sent a current VCAA letter for the back condition on 03/04/05. The additional medical evidence received has been reviewed and an SSOC was released on 5/16/05. More evidence was received 6/24/05 and a new SSOC was prepared 8/30/05.

Huntington AMC Resource Center

26. VA Form 9 date: 06/07/88.

The veteran has service in the Army Reserves. His claim has been remanded on four different occasions in attempts to verify all of his periods of active duty for training and inactive duty for training from 1974 to 1986. The last remand was to attempt to verify periods of service through the Defense Finance and Accounting Service (DFAS) and to request a VA examination. A VA exam has been completed, and a new decision will be made upon verification of active duty status from DFAS. Requests to DFAS for verification were sent on 5/26/05 and 8/1/05.

St. Petersburg RO

27. VA Form 9 date: 04/27/88.

The file was transferred from San Juan in April 2002. The RO requested and received additional service medical records, received negative reply via PIES for any exposure to Agent Orange, had documents translated, received private treatment reports and processed a new claim and a new appeal. Per remand, the RO sent 6 requests to VAMC San Juan for either negative reply or copy of treatment records from 1986 to 1997; a reply was received on 5/23/05 indicating records do not exist. A complete review of the claims folder was accomplished, and all documents written in Spanish have been translated, verbatim, per BVA remand instructions. New documents submitted by the veteran are awaiting translation. A memo to the Army Corps of Engineers and the U.S. Armed Services Center for Unit Records Research (USACURR) has been prepared, per remand instructions, in order to attempt to verify Agent Orange exposure in Luquillo, Puerto Rico.

28. VA Form 9 date: 06/16/89.

SOC was released on 11/20/01. A hearing was held and the RO made attempts to verify employment records and income per veteran's request. The veteran requested another hearing, indicating that he was attempting to get an attorney to represent him at the hearing. The hearing was scheduled and then cancelled. A new claim was filed and processed. A NOD was filed with the evaluation assigned. The claim was re-evaluated, and an SOC released on the new claim. A DRO hearing was requested and another new claim was filed. An SSOC was required on remand issues. A temporary file was created and the appeal was certified to BVA on 6/1/05.

29. VA Form 9 date: 09/29/89.

There were several claims including an 1151 claim that was processed simultaneously with the remand issues. VA exams obtained for remand/partial grant and an SSOC was released in 02/04. A new NOD was received and processed as well as a hearing request, which was held. BVA hearing revealed a new inferred claim for IU. The case was remanded to address this inferred claim on 03/03/05. All actions have been completed for the original remand issues and a VA exam was completed for the IU claim. A request for Social Security Disability records is still open; a second request was sent on 8/19/05.

30. VA Form 9 date: 10/03/89.

VCAA notification and VA exams are completed and in file. The veteran has filed three new claims that were worked simultaneously with remanded issues. The Rating Decision dated 6/20/05 was a partial grant of benefits sought on appeal, and an SSOC was issued for the remand issues on the same date. VA Form 9 was submitted 8/5/05 and contained new contentions of CUE for the assigned evaluation. The appeal is under review for a new decision.

31. VA Form 9 date: 11/09/89.

CAVC remanded the appeal due to VCAA. VCAA notification was sent and a response was received from the veteran. Additional records were obtained from two private sources, and a new SSOC was issued on 9/13/05.

Central Area Response

Chicago RO

32. VA Form 9 date: 4/13/90.

Remand dated 11/5/03 noted the September 2003 change to the Rating Schedule for spine conditions and requested compliance with CAA and a new orthopedic examination. VCAA letter was sent 6/24/04. We requested examination at Danville on 8/23/04 (they would not do the exam), at Indianapolis on 12/6/04 (vet requested West Side), and at West Side on 3/15/05. An SSOC was issued, and the appeal was recertified to BVA, received by them on 8/15/05.

Houston RO

33. VA Form 9 date: 03/28/90.

This is a contested death claim that was remanded on 8/14/04 for VCAA. Prior to that date, the appeal was based on recognition of appellant as a surviving spouse. During the appellate process, another claimant filed a claim for DIC benefits. The claim was previously remanded for the RO to make a determination. The RO ruled favorably for the new claimant and this is now a contested DIC claim. New SSOCs were sent 4/18/05 and 8/25/05. Pending suspense, the appeal is ready for recertification.

Little Rock RO

34. VA Form 9 date: 09/20/88.

Appeal was filed in 1988 with the Muskogee RO. An SSOC was issued on 1/3/89. The veteran subsequently relocated to Arkansas and filed a new claim with them in 1999. During the processing of the new claim, it was discovered that the appeal filed in 1988 was unresolved. Based on additional evidence in the claims file, another SSOC was released 6/7/00. The case was certified to BVA in 4/25/03. BVA remanded the case on 3/12/04. New examinations were requested in March 2005; however, the specialty examinations, as requested by the remand, were not completed as requested. New examinations were requested on 8/18/05.

35. VA Form 9 date: 09/29/88.

BVA originally denied claim 8/6/90, and CAVC remanded the case to BVA for further evidence. The original remand dated 3/27/92 ordered the RO to obtain private medical reports and conduct a VA hearing loss examination. All remand evidence was obtained, reviewed, and adjudicated. BVA subsequently remanded claim on 4/26/94 for ENG, CAT, MRI, neurology, and otolaryngology exams; on 7/17/97 for a VA panel opinion from an otolaryngologist and a neurologist regarding hearing loss; on 4/11/01 for private treatment records, a new audiology exam, and comment on new issue of industrial inadaptability. The current remand dated 9/29/03 orders VA to obtain private treatment records and schedule a new VA medical exam for veteran's claimed back condition. On 5/19/05, the AMC completed remand action. An SSOC was issued on 6/21/05. VA Form 646 was requested from the service organization, but as of 9/16/05, had not been completed. Review on 9/16/05 resulted in a grant of one issue on appeal. Three additional appeal issues were recertified to BVA on 9/16/05.

Milwaukee RO

36. VA Form 9 date: 7/27/89.

The case had originally been remanded to the AMC in August 2003 and received by the RO in April 2004 because the AMC felt there was private attorney representation. A review of the file showed that the attorney had revoked his representation. The case was remanded for a VA examination to determine whether the veteran had manifestations of a psychosis either during service or within one year of discharge for service connection for schizophrenia. It had been previously remanded to BVA, and they had prepared another brief for the Court based on a Board of Specialists' opinion. The Court had again remanded it to BVA. Development was undertaken to obtain treatment records from various VAMCs. The RO contacted the veteran's

fiduciary because the veteran did not report for his first examination and it was indicated he was homeless. Veteran underwent a VA examination, and an SSOC was issued. Case was certified to BVA on 8/18/05.

St. Louis RO

37. VA Form 9 date: 01/30/90:

The veteran has private attorney representation and has also requested three hearings before a Veterans Law Judge and two hearings before a Hearing Officer during the course of this appeal. There has been one CAVC and two prior BVA remands. The current remand, dated 1/14/04, was originally sent to the San Diego RO. Subsequently, per the veteran's request, the claims file was transferred back to the St. Louis RO in November 2004. No action on the remand had been initiated prior to the transfer. This appeal is further complicated by two other appeals pending concurrently since 2000. The result was two separate remands received in November 2004. On 5/11/05, the RO sent two VCAA letters to the veteran regarding treatment for the issues on appeal since April 2003 and also requested copies of all Social Security disability records. On 7/13/05, VA examinations for all claimed conditions were requested, but a need for additional development was noted in August 2005 and the file was referred to the RO's Military Records Specialist.

Wichita RO

38. VA Form 9 date: 08/14/89.

This case was remanded on July 10, 2003, for VCAA, based on change in law. VCAA was sent 12/15/03, and an SSOC was sent 2/12/04. The Rating Decision dated 4/21/04 awarded a total evaluation for PTSD from 5/13/03. The appeal continues, as this is not the effective date requested. A new NOD with the effective date of the 4/21/04 rating was received 8/6/04. SOC was sent 3/21/05. The issues originally under appeal continue to be under appeal. This file has not been returned to BVA because of new appeals and claims which are inextricably intertwined with at least one of the issues on Remand. VA Form 8 was prepared on 8/30/05 and the appeal was recertified to BVA. The file was received at BVA on 9/8/05.

39. VA Form 9 date: 10/24/89.

This case was remanded for VCAA which was prompted by a change in law. VCAA letter was released on 5/13/05, and additional VA treatment records secured and considered. A new SSOC was prepared on 8/30/05. Additional appeals on 8 other issues were received and an SOC was issued on 9/8/05, granting some of the issues on appeal.

Western Area Response

Anchorage VARO

40. VA Form 9 date: 09/01/88.

The case was remanded in order to provide the veteran current due process (VCAA) and examinations. The due process period expired on 4/4/05 and examinations were scheduled, but the veteran did not report for the requested examinations. The remand also instructed that the RO advise the veteran that hearings can only be conducted at the RO, and he was notified

that he can elect a hearing by video or telephone if his health precludes travel. The veteran has not yet responded to the letter. VCAA was sent 8/17/05 for one issue missed on the letter dated 4/4/05. An SSOC was issued 9/1/05 on 5 issues, and the remaining issue will be addressed once the VCAA diary has passed.

Los Angeles VARO

41. VA Form 9 date: 02/07/90.

The NOD was submitted on a Rating Decision dated 2/3/89. There were also two BVA remands dated 10/31/94 and 7/29/98. Currently, the appeal is pending additional development for more issues that the veteran raised which are inextricably intertwined with the issues on remand. The file was being prepared for certification prior to this. SSOC issued on 1/21/05 did not address the intertwined issues. Another SSOC was completed 5/17/05, to cover all issues on appeal from the last remand of July 1998 to the newly appealed issues. A complete grant of benefits sought on appeal was issued on 6/7/05, and the appeal was closed.

42. VA Form 9 date: 03/12/82.

The issues that were originally addressed in that remand have all been adjudicated by BVA in multiple decisions. The remaining issues on appeal have been discussed with the veteran's representative. They withdrew some issues on appeal, and a tiered Rating Decision from 1998 until present for a spinal condition was promulgated. An SSOC was completed, and the appeal was certified to BVA. The file was received at BVA on 8/8/05.

Oakland VARO

43. VA Form 9 date: 01/23/90.

The veteran filed an informal claim for service connection for PTSD on 7/31/87 (formal claim on 8/20/87). Based on a joint motion from appellant and VA, CAVC vacated the BVA decision on 4/27/98, and again on 8/11/03. BVA remanded the case on 8/30/04 for VCAA notice. The case was initially worked by VARO Los Angeles, because the veteran resides in Southern California (Redlands). The Oakland RO received additional VA treatment records and the case on 4/22/05. Additional evidence has been received, and a new SSOC was sent 5/27/05. The veteran alleges that classified information would support his claim, and jurisdiction was therefore transferred to the Washington D.C. Regional Office on 8/16/05.

44. VA Form 9 date: 03/01/56.

Veteran's representative filed a motion for reconsideration on 8/25/03, of BVA Decision of 5/17/56. BVA Decision of 7/13/04 reconsidered this decision, restored the 30 percent for flat feet, and remanded for additional evidence and VCAA. Remaining issues on remand are evaluations for flat feet, hemorrhoids, and impaired hearing, which have been pending since 1955. Other recent issues were also included in the remand. We have restored the 30 percent evaluation. SSOC was issued 5/27/05. Case sent to the representative for a 646 on 8/1/05 and is still there, as of 8/24/05. The case is ready for recertification to BVA once 646 complete.

45. VA Form 9 date: 11/15/89.

The surviving spouse contends that the veteran developed multiple myeloma from exposure to ionizing radiation as a POW in Japan. VA had granted service connection for DIC effective 8/24/93, based on liberalizing legislation. The issue on appeal is an earlier effective date for DIC benefits. BVA remanded this decision on 7/12/03. On 5/3/05, this claims file was sent to Compensation and Pension Service for an advisory opinion, and on 5/13/05, the Regional Office was directed to resubmit the case to DTRA for an opinion on dose estimates. The letter was sent on 6/13/05, and will have to be returned to C&P Service for a new opinion once dose estimates from DTRA are received.

Portland VARO

46. VA Form 9 date: 05/18/89.

The veteran's claims folder was received from St. Petersburg RO on 12/20/04. Development action was initiated and a partial grant was completed for two issues on appeal. Medical examinations have been ordered for the other two issues on appeal. A VA exam was conducted and noted that the veteran is now receiving Social Security Disability benefits. Development to Social Security was initiated on 8/22/05.

47. VA Form 9 date: 04/06/90.

The veteran's appeal was remanded for the fifth time on 2/24/03, for further development. The required development was initiated to the U.S. Army Center for Health Promotion and Preventative Medicine. Based on the results of this development, further development to the DTRA was required. Development to DTRA was initiated on 11/21/03, and additional requested information was supplied to DTRA on 7/26/04 and 9/21/04. We are awaiting the response from DTRA, which may take two years.

Reno VARO

48. VA Form 9 date: 09/21/88.

Remand dated 7/16/03 was primarily for a VA exam. The veteran had failed to report for a VA exam as required by 8/24/00, remand; however, the BVA felt the veteran should be afforded another opportunity to appear for a VA exam based on the need for a medical opinion and due to his mental capacity as pointed out by his representative. VA exams were requested on 2/24/05 and 5/18/05 at VAMC Las Vegas, and the veteran failed to report. New exams were requested on 8/1/05 and 8/17/05 at Loma Linda, and the veteran failed to report. An SSOC was prepared. A new NOD was received, which is currently being addressed by SOC.

49. VA Form 9 date: 01/23/86.

Case was remanded for VCAA compliance and for the RO to attempt to locate and obtain all private treatment records mentioned by the veteran. The file was transferred to VARO Reno on 11/05/04, from VARO Atlanta. The veteran was sent an updated VCAA letter on 12/16/04. The veteran was also scheduled for a VA exam, and a new SSOC was released on 6/6/05. The claims folder was then transferred to the St. Petersburg RO because he resides in their jurisdiction and has filed a new claim. The file was received by them on 6/13/05. A DRO

reviewed the file and requested VA Form 646 from the veteran's representative. In lieu of a 646, the service organization submitted a memorandum which demanded that the veteran be afforded another VA examination of his lumbar spine (the issue on remand). This memorandum was also accepted as a claim for service connection for diabetes and diabetic retinopathy. Since that date, the veteran has also submitted additional claims for increased evaluations of multiple service connected conditions. As of 9/15/05, the file is on an experienced DRO's desk for determination of whether another VA examination for the back is necessary or whether the examination rendered in Reno on 2/15/05 is adequate for rating purposes. If no examination is necessary, then the file will be returned to BVA and the memorandum from the service organization accepted "in lieu of a 646." The RO will create a temporary file in order to adjudicate the new claims and the claims for increase.

San Diego VARO

50. VA Form 9 date: 10/13/88.

The case was remanded 3/26/99. Rating dated 6/12/00 granted SC for irritable bowel syndrome, i.e., a full grant of benefits on one issue, and an SSOC was sent for service connection for posterior subcapsular cataract due to ionizing radiation. Due to changes in the VCAA law, a new VCAA letter was sent on 7/1/03. Shortly thereafter the new regulations came out about dose estimate reconstructions. As the claim was based upon exposure to ionizing radiation, the dose estimate review was conducted on 11/12/03 and a letter was sent to DTRA on 11/12/03. An interim reply was received from DTRA on 2/13/04. An e-mail request to expedite was sent to VACO on 1/21/05. Pending reply, a decision will be made.

Appeals Management Center

51. VA Form 9 date: 1/18/90.

BVA originally denied the veteran's claims in June 1991. In December 1992, CAVC remanded the case for additional records, which was then remanded by BVA in August 1993. In July 1996, BVA denied one issue and remanded another for a VA examination. The Court remanded the denial to BVA in October 1997, and BVA then remanded the case to the RO in June 1998 for a specialty VA examination. The veteran also filed a new NOD on the propriety of recoupment of readjustment pay. BVA again remanded the case on 12/11/00 for timely notice of the scheduled VA examination and photographs submitted by the veteran regarding one of his disabilities. An SSOC was rendered on 11/14/02. BVA again remanded the case on 3/5/04, because the veteran filed a new NOD on a separate issue. Additionally, the RO did not review the 2,000 photographs submitted by the veteran prior to re-certification to BVA. VCAA notification was sent to the veteran and two separate examinations were conducted, and the claim was forwarded to a Rating Veterans Service Representative (RVSR) for a decision on 8/30/05.

52. VA Form 9 date: 03/29/89.

BVA remanded in March 1990 for a VA examination in order to obtain separate findings of the neurological and psychiatric manifestations of her service connected brain syndrome. A second remand in December 1991 was rendered for the same reason. SSOCs were drafted in September 1993 for the original Form 9 appeal, and in December 1994 an SSOC was rendered for other conditions. In an Order dated April 1996, BVA granted service connection for additional physical conditions, and due to the partial grants, remanded the original IU appeal to

the RO for adjudication after implementation of the new grants. Subsequently, BVA remanded the case in April 1998 to secure newly-identified Social Security records and to adjudicate new NODs filed on additionally requested physical conditions. Due to new appeals, the original IU issue was remanded. Additional treatment records were also identified by the veteran. In March 2003, BVA denied an increase in one of the remaining physical conditions left on appeal, and remanded the IU claim to the RO to adjudicate additional evidence submitted by the veteran after re-certification to BVA. Subsequent to the last remand, VCAA correspondence was forwarded to the veteran and a VA examination was held. An SSOC was done 4/27/05. The appeal was certified back to BVA on 8/17/05.

53. VA Form 9 date: 1/18/90.

Subsequent to the substantive appeal, the veteran requested a hearing, which was held on 3/8/90. SSOCs were rendered in May and July 1990. In August 1990, the RO sent correspondence to the veteran indicating his claim for increased service connected disability compensation was denied. No further action occurred until the veteran filed a new claim for increase in 2002. The new claim was adjudicated and an SSOC was drafted on 11/27/02. BVA remanded the case on 10/27/03 due to inadequate VA examinations, as the report did not indicate whether the veteran's claims file was reviewed. Subsequent to the latest remand, the RO sent a VCAA letter to the veteran with the newly amended skin criteria obtained VA treatment records. An SSOC was drafted on 6/6/05, and a 646 was requested. On 9/13/05, the appeal was recertified to BVA.

54. VA Form 9 date: 8/7/85.

An SSOC was rendered on 12/16/85, and a 646 was obtained from the veteran's representative in February 1986. In the same month, the veteran's representative requested a 30 day extension of any further action on the appeal, and also, a temporary transfer to the service organization in a separate location. Thereafter, the veteran could not be located. In September 1990, the service organization requested the same temporary transfer. The veteran filed dependency information in September 1993, with a new address noted. A new claim was filed in October 1994, and adjudicated on 8/15/95. An NOD was filed subsequent to this Rating Decision on 8/8/96. Another rating in April 1997 was appealed on the basis of CUE and for an earlier effective date. An SOC was filed on 11/18/98. BVA remanded the case on 9/28/00, due to further development on a new "inextricably intertwined" issue. On 7/25/01, the veteran filed a Motion for Reconsideration with BVA, which was adjudicated in December 2001. An SSOC was rendered in April 2002, and a new claim for CUE was adjudicated in May 2003. After additional evidence was received, another SSOC was rendered on 6/16/04. The appeal was certified, but due to additional new "inextricably intertwined" claims for service connection filed by the veteran, BVA remanded the case in February 2005. The RO sent a VCAA letter to the veteran on 3/29/05, and scheduled a VA examination. As of 8/30/05, the file is still at the hospital for the examination.

55. VA Form 9 date: 06/13/89.

In 1992, BVA remanded the case for additional service medical records. Active duty was subsequently confirmed and additional treatment records received. In September 1993, the appeal was referred to BVA, and BVA remanded the case on 7/27/95 for a VA examination addressing the causal relationship between conditions noted in service and the veteran's current disability. These VA examinations were held in September 1995 and March 1996. An SSOC was drafted on 5/8/96. Due to a newly filed NOD, an SOC on a separate issue was

rendered on 11/14/96. The RO requested SSA records repeatedly from 1995 to 1997 and received a negative reply; subsequently, in September 1997, another SSOC was drafted. The veteran filed a new claim in September 1997 which was adjudicated on 1/29/98. BVA remanded the appeal on 4/8/98 due to inconsistencies of diagnoses in the medical record. Additionally, BVA construed a statement from the veteran as an NOD and required the RO to send an SOC to the veteran. Thereafter, the veteran filed new claims, including a request for IU. The claim was denied, and timely appealed in November 2000. VA examinations were held on this issue in September 2000 and January 2001. In March 2003, the veteran withdrew the pending appeal on IU. Subsequently, BVA remanded this case on 12/17/04 due to the need for specific medical information regarding the veteran's co-existing mental and physical disabilities. Since the remand, an SSOC was drafted on 4/14/05. In response, the veteran has submitted additional new evidence, and records were again requested from SSA on 7/21/05.

56. VA Form 9 date: 4/10/86.

BVA rendered a decision in this case in February 1987. However, a timely-filed request for hearing was not associated with the file, and upon discovery in February 1988, BVA vacated the decision. SSOCs were issued in October 1990, and April 1992. The veteran requested personal hearings on numerous different issues before a hearing officer. These hearings took place in January 1991 and March 1991. BVA remanded the appeal in June 1993 for a VA exam for the veteran's orthopedic disabilities. The appeal was returned to BVA in September 1994, who remanded the case in March 1997 in order to schedule a travel board hearing as requested by the veteran's attorney in February 1997. Between 1997 and 2001, the RO attempted to schedule a hearing date with the veteran's attorney. Additionally, the attorney sent repeated requests for copies of the veteran's file. In October 2001, the attorney advised that due to personal health problems, he would be unable to continue to represent the veteran. In July 2002, BVA began developing for additional evidence, but in October 2003, BVA remanded the appeal to the RO for further due to the DAV court decision. An SSOC was drafted on 2/24/04. BVA remanded the case on 7/22/04 for compliance with VCAA requirements. A VCAA letter was sent to the veteran and as of 8/30/05, is pending receipt of any additional evidence.

57. VA Form 9 date: 1/10/90.

BVA remanded this case in November 1994 for VA examination since none had been conducted subsequent to 1965. In 1997, the RO developed evidence, including SSA records, and certified the appeal. BVA denied the veteran's appeal in June 1998. CAVC remanded the case to the BVA in January 2000. In September 2000, BVA remanded this case to obtain further records from the Air Force. Thereafter, VA requested additional service records, obtained treatment records, and sent VCAA notification to the veteran. BVA again remanded the appeal in June 2003 for a VA examination for the veteran's back. BVA also instructed that an SOC be sent to the veteran based on a November 2003 document construed to be an NOD. BVA remanded the appeal in November 2004, as the RO failed to discuss findings in outpatient treatment records relative to the veteran's back. Subsequent to the last remand, additional outpatient treatment records have been obtained and a new SSOC was drafted on 5/16/05. The case was certified to BVA on 7/29/05.

58. VA Form 9 date 2/13/90.

The remand order issued by BVA on 8/29/03 requested compliance with VCAA and development of a stressor that the veteran mentioned during a VA examination in October 2002. A VCAA letter was sent to the veteran, and an evidence package consisting of letters and excerpts of service medical records was received from the veteran on 1/6/05. A rating specialist reviewed the case and contacted the veteran to obtain additional evidence. The veteran requested 60 additional days to submit evidence. He also submitted a CD-ROM on 5/6/05. Service connection was granted in a Rating Decision dated 5/16/05, which is a complete grant of benefits sought on appeal. The file was returned to the RO of jurisdiction on 7/27/05.

59. VA Form 9 date: 11/13/89.

The remand order issued by BVA on 9/11/03 ordered compliance with VCAA provisions, a list of health care providers, VA to obtain complete clinical records, and VA to order VA examinations and re-adjudicate the claim. The remand orders were fulfilled, and the case was re-certified to BVA and received by them on 5/2/05.

60. VA Form 9 date: 8/25/89.

The BVA remand of 8/9/03 ordered the RO to request up a VA examination and to develop additional evidence from the veteran. The VA examination was ordered and a letter was sent to veteran requesting evidence. The vet submitted multiple replies, but in February 2005, failed to report for his examination and asked that it be rescheduled. The psychiatric examination was rescheduled on 5/16/05, and the claims folder was sent to the VA Medical Center in San Juan. In July 2005, a Rating Decision granted all benefits sought on appeal. The claims folder was transferred back to the RO of jurisdiction.

61. VA Form 9 date: 11/15/88.

BVA remand order issued on 11/5/03 requested compliance with VCAA requirements and re-adjudication of the issues of a low back condition and IU. On 3/22/05, an SSOC was prepared and released. The case was referred to the veteran's service organization for review and preparation of VA Form 646 on 4/26/05 after having received an expedited attachment from veteran, which waived the 60 day dairy period for response to an SSOC. A 646 was submitted, and as of 8/30/05, the file is under review for a new decision or recertification back to BVA.

62. VA Form 9 date: 1/30/89.

BVA remand dated 7/3/03 ordered VA to comply with VCAA, to request Social Security records and outpatient treatment records, and to schedule VA examinations. The remand order was executed, and an SSOC was released on 4/15/05. The RO recertified the appeal to BVA, who received it on 6/28/05.

63. VA Form 9 date: 4/24/89.

BVA remand of 10/8/03 ordered VA to comply with VCAA and to re-adjudicate the claim for an increase. A VCAA letter was sent, and the veteran requested a 60 day extension on 6/23/04. The veteran submitted a voluminous package, which was received on 8/30/04. Examinations were conducted on 3/28/05 for the veteran's bone, joint, feet, and spine conditions. The RO

received the claims file and VA examination results from the hospital on 5/9/05. An SSOC was released on 5/17/05, and the appeal was certified back to BVA on 8/9/05.

64. VA Form 9 date: 5/11/89.

BVA remand of 11/20/03 ordered VA to schedule the veteran for a VA examination and request an opinion from a cardiovascular specialist. An SSOC was prepared and released on 2/15/05. On 4/15/05, the case was reviewed and referred to the veteran's representative in Puerto Rico for VA Form 646 preparation. The case was recertified to BVA and received at BVA on 8/16/05.

65. VA Form 9 date: 12/10/85.

BVA remand dated 12/12/03 ordered the RO to perform further development under VCAA requirements and to re-adjudicate the vet's claim for 1151 benefits. A VCAA letter was sent to the veteran and additional development was undertaken. An SSOC was released on 5/4/05, and the case was recertified to BVA, received there on 6/28/05.

66. VA Form 9 date: 10/29/87.

BVA remand dated 1/14/04 ordered the RO to comply with VCAA requirements, obtain medical from health care providers, schedule a VA psychiatric examination, and re-adjudicate the appeal. SSOCs were released on 12/27/04, 2/4/05, and 4/26/05. The case was recertified to BVA on 7/20/05.

67. VA Form 9 date: 3/27/90.

BVA remand of August 27, 2004 required solicitation of any and all potential sources of evidence, assurance that all development was completed, the scheduling of a specialty VA examination, and reconsideration of the appeal. The RO sent VCAA notification to the vet on 2/6/05, a specialty examination was performed on 4/16/05, and treatment records were obtained. An SSOC was prepared and the case was recertified to BVA on 8/12/05, received by them on 8/25/05.

68. VA Form 9 date: 5/19/83.

BVA remand dated 7/25/04 ordered further evidentiary development and reconsideration. VCAA notification and solicitation of evidence were sent to the veteran by letter dated 9/9/04. An SSOC was released on 5/19/05. VA Form 646 was received, and case recertified to BVA, received by them on 7/28/05.

69. VA Form 9 date: 1/4/88.

BVA remand dated 6/3/04 ordered VCAA notice for a CUE claim. Proper notice was provided to the veteran on 6/7/04. A response from the veteran identified additional records available to include possible service medical records. Records from the African American Study of Hypertension and Kidney Disease and records from the Ohio State University were requested and received. VA treatment records from the VA outpatient clinic in Columbus, OH were also obtained. Additional inpatient treatment records were obtained from the 5th TAC hospital, Travis AFB, CA for the period from 1/25/55 to 2/2/55. An SSOC was released on 5/19/05; VA Form 646 was received, and case was recertified to BVA and received by them on 7/9/05.

70. VA Form 9 date: 3/30/90.

This case was remanded by the BVA due to inadequacy of VA examinations, deficient reasons and bases, changes in VCAA requirements, and changes in the criteria for rating the spine. CAVC also remanded the case twice, vacating BVA decisions of 1997 and 2003 respectively. The most recent remand dated 9/3/04 ordered the RO to schedule a new examination for the spine, to re-adjudicate the issue on a de novo basis without reference to prior adjudications since the filing of the claim in August 1989, and to rate the low back disability under the relevant criteria in effect prior to and after 9/26/03. A VCAA letter was sent to the claimant, and he submitted a statement on 10/7/04, indicating there was no other information available. Treatment reports from the VA Medical Center in Memphis from 9/5/02 to 10/14/04, were obtained. Telephone contact was made with the veteran and his representative on 9/15/04; the veteran stated he wished to waive the 60 day waiting period offered by the VCAA letter. The veteran was scheduled for a VA examination for his spine, but the report received on 4/23/05 did not address the outstanding remand from October 2003. A Rating Decision was prepared on 5/19/05 which deferred a final decision and ordered another VCAA letter and additional neurological evaluations consistent with the 2003 BVA remand order. The veteran failed to report for this examination. The VAMC sent the claims file to the Washington DC AMC rather than to St. Petersburg AMC. The file has been forwarded to St. Petersburg and was under review by an RVSR on 8/30/05.

71. VA Form 9 date: 5/4/89.

This case has been remanded by BVA on 6/9/94, 10/27/88, and 9/28/04. The remands ordered verification of service prior to January 1978; VCAA notice and development for SSA records, private medical records subsequent to June 1995 and VA treatment records since October 2002; review of the VA Vocational Rehabilitation folder, VA examinations; obtaining; and a SOC on the willful misconduct decision regarding a motor vehicle accident from 12/12/84. VCAA notification was sent, additional records were secured, and a VA neurological examination was completed. An SSOC was prepared on 5/19/05 and the appeal was recertified to BVA, received on 8/9/05.

72. VA Form 9 date: 06/07/88.

The veteran has service in the Army Reserves. His claim has been remanded on four different occasions in attempts to verify all of his periods of active duty for training and inactive duty for training from 1974 to 1986. The last remand was to attempt to verify periods of active duty service through the Defense Finance and Accounting Service (DFAS) and to request a VA examination. A letter was sent to DFAS on 5/26/05. A VA examination has been completed, but the AMC continues to wait for the required information from DFAS. A follow up letter to DFAS was sent on 8/2/05.

73. VA Form 9 date: 11/22/77.

The veteran appealed his entitlement to service connection for a seizure disorder. BVA remanded the claim for additional evidence on 8/14/03. The remand order was fulfilled, and an SSOC was issued in June 2005. VA Form 646 has been received from the veteran's representative, and the case was recertified to BVA in August 2005.

74. VA Form 9 date: 01/03/85.

Remand dated 9/1/98 ordered the VA to request a search at the National Personnel Records Center (NPRC) conduct for the veteran's service medical records (SMR), to obtain treatment records from the military, and to afford the veteran an opportunity to identify all treatment providers. The 10/25/83 Rating Decision had denied service connection for multiple issues without complete SMRs. Three subsequent SSOCs were issued (6/97, 10/02, and 11/03), as were five more Rating Decisions, granting some issues on appeal. The most recent remand and decision dated 4/1/04 orders the RO to comply with VCAA, giving the veteran the opportunity to identify all health care providers, and to order appropriate VA examinations. The AMC promulgated the BVA decision granting benefits sought on appeal on 4/15/04 and began development of the remand on 9/2/04. The necessary VA examinations were completed on 12/1/04. Records were requested from Eisenhower Army Medical Center, but they refused to release records, stating that a release form from the veteran is needed, because he was seen there as a private citizen for the time period requested. A release form from the veteran was requested, but no response has been received as of 9/15/05. A Rating Decision was made on 9/16/05, which granted one additional issue on appeal. An SSOC was issued the same date for two remaining appeal issues, and the appeal will be certified to BVA following response or the 60 day diary period.

75. VA Form 9 date: 4/27/88.

On 4/19/04, the BVA remanded the appeal to the RO for additional development in regards to the veteran's entitlement to service connection for asthma. The veteran submitted additional evidence to support his claim, and a VA examination was conducted in June 2005. After review of the exam report by the RO in August 2005, the case was returned to the VAMC for completion of a pulmonary function test and the requested medical opinion.

76. VA Form 9 date: 1/10/89.

Remand dated 6/29/04 orders the RO to complete VCAA notification for the issues decided in the 1988 appealed decision, to dispose of issues not resolved in the 1989 appeal, and to conduct further development with regard to effective date and service connection evaluation. The most recent remand dated 4/22/05 orders VCAA notice regarding the assigned service connected evaluation of 30 percent from 1988 to 9/26/92. The RO complied with the remand notice as of 4/26/05, but on 9/15/05, the reviewing RVSR noted additional required development and issued a deferred decision. Development has been initiated and once complete, a new decision will be made.

77. VA Form 9 date: 2/21/89.

The original remand dated 4/22/97 orders additional development to include an opinion from the VA Under Secretary, and the issuance of an SSOC. In their decision on 12/3/02, BVA granted one issue, denied one issue, and remanded the remaining two issues for additional development, to include VA examination. After receipt of additional evidence and issuance of another SSOC on 9/16/03, the RO re-certified the case back to BVA on 1/9/04. BVA again remanded, directing additional notification and development consistent with VCAA. The VA is attempting to locate the veteran, as our recent requests for additional evidence have been returned by the US Postmaster. As of 8/30/05, the AMC continues to develop for the whereabouts of the veteran.

78. VA Form 9 date: 4/11/89.

BVA decision and remand order dated 12/5/03 granted service connection for depression as secondary to PTSD and evaluated both conditions together as 50 percent disabling. The remand also increased the veteran's service connected hypertension to 20 percent effective 1/10/00 and assigned a temporary evaluation of 100 percent for the veteran's service connected back disability, effective 12/13/89. A 20 percent evaluation was resumed from 2/1/90. AMC submitted a request to have the veteran examined at a local VA Medical Center. The VAMC has reported that their appointment letter was undeliverable. As of 8/30/05, the file was being reviewed for the veteran's whereabouts and further action, to include rescheduling the examination.

79. VA Form 9 date: 09/22/89.

Original remand dated 11/26/90 orders a VA examination by two board-certified psychiatrists for chronic psychiatric disorder. The veteran had been denied service connection for a "nervous condition" or chronic psychiatric disorder on 1/26/80. Six additional Rating Decisions confirming the initial denial were issued from 1983 to 1996. His claim was reopened and denied in 1988, and he appealed this decision. Since the inception of his appeal, the veteran has moved to the jurisdiction of 5 different ROs and has been issued 13 SSOCs. The appeal has been re-adjudicated under the order of 6 separate BVA remands, obtained treatment records from providers in six states, and responded to congressional inquiries from at least 11 different senators and representatives from California, Florida, Ohio, and Virginia. The most recent remand dated 1/6/05 orders VCAA compliance, *Manlicon* compliance for PTSD, identification of all treatment providers, and a VA psychiatric examination for the claim for service connection for a psychiatric disorder other than PTSD. VCAA development letters were sent to the veteran on 2/4/05 and 2/22/05. The RO secured evidence from several different private medical facilities identified by the veteran. A VA examination was requested and done on 8/11/05, but as of 8/30/05, the claims folder had not been received from the hospital for review and decision.

80. VA Form 9 date: 11/15/89.

The BVA remand ordered the RO to develop for additional arguments or evidence from the claimant and to schedule a VA orthopedic exam specifically to evaluate pain. The RO has attempted to contact the veteran to reschedule his medical examination and request further evidence, but the mail was returned undeliverable. The mail was redirected to a new address; however, we received notice that the veteran passed away on 6/1/05, so the appeal was closed and the claims folder was returned to the RO of jurisdiction.

81. VA Form 9 date: 06/03/85.

The original remand dated 1/29/89 was due to change in law (Nehmer decision) requiring new consideration of dioxin (Agent Orange) exposure claims. Rating Decisions were issued on 11/29/93 and 3/31/94 based on remand development and new information. A subsequent remand was issued on 3/14/95, which ordered the RO to obtain service personnel records and private treatment records, to develop for PTSD stressors, to request VA exams by a board-certified psychiatrist, a board-certified urologist, and for any disability related to Agent Orange exposure. A Rating Decision was issued based on the remand development on 7/8/98. Another remand was issued on 2/2/99 to obtain additional private treatment records, further development for stressors to include morning reports from the NPRC, and another VA

psychiatric exam. Following this development, rating action was taken on 10/9/02. The most recent remand dated 8/4/03 orders additional development to USASCURR regarding service stressors, which has been done. The RO is currently awaiting response from USASCURR.

82. VA Form 9 date: 07/12/89.

The original remand dated 4/10/90 required the RO obtain authorization from the veteran for private treatment records and to obtain records from VAMC Lexington. Since the original remand, the case was re-certified to BVA after obtaining and processing the requested remand information. On 4/1/93, BVA denied all issues. CAVC then vacated BVA's decision. On 9/22/93, BVA remanded the case for additional development to include a VA examination. RO Rating Decision dated 7/18/95 granted one issue. The RO completed SSOCs for the other issues and recertified the appeal to BVA. On 8/30/96, BVA granted two issues, denied one, and remanded the remaining one issue on appeal (NSC pension) for VA treatment reports, SSA records and a VA examination. After receipt and review of additional evidence, the RO issued an SSOC on 12/23/98. On 1/6/99, the veteran filed a substantive appeal on eight new issues stemming from the RO Rating Decision dated 9/23/98. All issues were certified to BVA; BVA remanded all issues for additional development on 4/9/99. The case was again recertified to BVA after having obtained and disposed of the remand order. In their decision on 4/3/02, BVA denied three issues and remanded the other six issues to its Development Unit. On 5/22/03, CAVC vacated one of BVA's decisions. On 12/30/03, for the seven issues on appellate status, BVA granted two and remanded the remaining five issues. The most recent remand requires VCAA notification, a VA examination and a request for additional National Guard service medical records. Additional evidence, to include VA examination, was received. The RO of jurisdiction requested copies of records from the claims file for processing of new claims submitted by the veteran. As it was a four-volume case, the file was temporarily transferred to the RO. The claims file was returned to the AMC on 8/17/05. Upon return, a review of the VA examination for the remand issue disclosed that a required test result and opinion were not sent, and the AMC asked the VAMC to fax the missing information to them on 9/16/05.

83. VA Form 9 date: 10/5/89.

BVA remanded the pending appeal for entitlement to an initial evaluation in excess of 30 percent for a headache disorder on 3/15/04. The RO requested the veteran's outpatient treatment records on 2/16/05 and received them on 5/17/05. A VA exam was scheduled and the veteran was sent a letter on 5/17/05. An SSOC was issued in July 2005 and as of 8/30/05, is pending expiration of the 60-day suspense prior to recertification to BVA.

84. VA Form 9 date: 3/6/90.

The original remand dated 5/26/04 requires the RO complete VCAA notification and development; obtain private treatment records; conduct orthopedic, ophthalmologic, oral, and respiratory exams; and issue new SOC for the issue of new and material evidence. Based on numerous claims and newly submitted evidence, ratings were promulgated on 6/11/92, 10/18/93, 7/26/94, 1/4/95, 3/27/95, 5/11/98, and 4/23/03. The recent remand dated 5/26/04 has been worked: VCAA notification has been sent and current private treatment records have been obtained. Based on this new evidence, a partial grant of benefits was issued. Additional VA examinations were done in June 2005, and as of 8/30/05, the appeal is with a RVSR for review and another decision.

85. VA Form 9 date: 4/9/90.

The original remand dated 9/13/91 required the RO to obtain authorization from veteran for private treatment records and additional service medical records from NPRC, and to request VA examinations. Since the original remand, the RO issued SSOCs based on additional evidence and re-certified the case back to BVA. On 9/8/92, BVA remanded the case for the same reasons. After obtaining and processing the requested remand information, the case was re-certified back to BVA. In their decision on 2/12/96, BVA denied one issue and remanded the remaining two issues for additional development, ordering the RO to secure authorization from the veteran for retrieval of police reports, service personnel records from NPRC, and to request a new VA examination and medical opinion. After obtaining and processing the requested remand information, the case was re-certified back to BVA. On 10/31/96, BVA again remanded the appeal for additional development for authorization from the veteran for any treatment related to his claimed conditions, police reports, service records relating to any line of duty determination for an accident in February 1980, and a VA examination and medical opinion. BVA also directed the RO to issue an SOC for an Administrative Decision dated 11/22/94 which found that the injuries sustained in a 2/24/80 accident were the result of willful misconduct. The RO issued the SOC on 6/11/99 and the substantive appeal was received on 7/14/99. After obtaining and processing the requested remand information, the case was re-certified back to BVA on 10/31/03. The RO re-adjudicated the issue of service connection for back injury, and a substantive appeal was received on 10/25/02, which was forwarded to BVA. In their decision on 12/2/04, BVA denied three issues and remanded the willful misconduct issue. The recent remand dated 12/4/04 required VCAA notification and development letter to the veteran for any additional evidence in support of his claim. In response to development letter, the veteran submitted authorization for treatment records previously of record and considered. Complete service personnel records were also requested and received. The appeal was referred for a decision on 9/16/05.

86. VA Form 9 date: 04/13/87.

The original remand was dated 5/16/90. An SOC and two SSOCs were sent on 1/13/87, 4/29/88, and 5/23/88 respectively prior to the appeal being certified to BVA. BVA issued a denial of the veteran's PTSD claim on 10/11/89, then remanded the case back to the RO on 5/16/90 in order to "assure due process of law" as a result of the *Nehmer* decision. Processing of the veteran's appeal was complicated by his felony incarceration from 1988 to 1990, of which the VA was unaware until November 1990, and the award of non-service connected pension. Since 1990, the veteran has submitted additional medical documentation which has resulted in 4 subsequent SSOCs (in 1995, 1996, 1999, and 2002) and two denials by Rating Decisions in 1994 and 2003. The current remand dated 10/24/03 orders the RO to comply with VCAA, order VA examinations for soft tissue sarcoma, a mental disorder, and other conditions secondary to herbicide exposure. On 4/11/05, the AMC sent 13 requests for private medical records and one request to a VA medical center per the veteran's request. We have received five replies, including records from the VA medical center and a special release form for one facility, which was forwarded to the veteran for signature on 5/16/05. Follow up letters were sent on 8/26/05; pending reply or expiration of the 30-day diary, the case will be reviewed for a decision.

87. VA Form 9 date: 7/13/89.

The original remand dated 4/6/98 directed the RO to attempt to obtain any pertinent records that might substantiate the veteran's claim for service connection for residuals of kidney removal, a cardiac condition, hearing loss, tinnitus, nose injuries, and to conduct a field investigation to

personally interview the veteran. The appeal was certified to the BVA by the Denver RO on 5/9/90. After receipt of a very incomplete rebuilt folder from the Records Management Center on 8/2/96, BVA declared the original file lost in 1997. The Denver RO attempted to further rebuild the folder, then returned it to BVA in February 1998. The veteran refused to meet with the VA Field Investigator on 5/21/98. The State Adjutant General's Office of the Texas National Guard provided a negative reply to our request for records. The BVA remand dated 10/3/03, following the DAV decision, ordered the RO to obtain service records from the Army Reserve Personnel Center and the veteran's National Guard unit in Fort Bliss, Texas. On 3/13/04, the AMC sent requests to ARPERCEN and the Commander of the 260th CA National Guard unit. The letter to the National Guard unit was returned undeliverable. A negative reply was received from ARPERCEN on 7/26/04. In October 2004 the veteran was asked to clarify his National Guard unit; he then reported he served in the Arkansas National Guard. The reply, received 4/6/05, to letter to the Arkansas National Guard indicated that National Guard records for the period during which the veteran served were now located at the Arkansas Historical Commission. A follow up request for National Guard records was sent on 5/16/05. On 6/20/05, records were received. An SSOC was issued on 9/16/05; pending reply and the control period, the appeal will be recertified to BVA.

88. VA Form 9 date: 12/24/86.

BVA remanded the pending appeal to determine whether the March 1991 decision denying service connection for cause of death should be revised or reversed on the grounds of CUE. The remand ordered the RO to secure VA hospital summaries for 1979, 1980 and 1987, the veteran's terminal hospital records from Oct. 1980, and VA District Counsel records from a 1982 Tort claim. On 6/7/05, action on the remand was completed, and the claims file was returned to BVA, which denied the claim on 9/15/05.

89. VA Form 9 date: 12/13/85.

BVA remanded the pending appeal for decisions on entitlement to an earlier effective date for the grant of service connection for PTSD. A second remand directed the RO's Committee on Waivers and Compromises to issue an SOC on the question of waiver of recovery of an overpayment of VA compensation benefits, to include the issue of whether the overpayment was properly created and assessed against the appellant. This claimant was represented by an attorney, and jurisdiction was transferred to RO in Baltimore on 4/11/04. On 5/12/04, BVA again remanded the case for further development under VCAA. Since the veteran filed a Notice of Appeal with CAVC, no action was taken on the remand. Thereafter, VBA received notification that the veteran died on 3/30/05. On 4/27/05, VA Form 21-530 (Application for Burial Benefits) was received at VBA, and a claim for non-service connected burial benefits was processed on 5/27/05. The case was returned to BVA, per their instructions dated 6/7/05; as of 8/30/05, the file is still there.

90. VA Form 9 date: 06/30/88.

BVA remanded the pending appeal for the following issues: entitlement to service connection for a nervous disorder claimed as secondary to the service connected back disability and entitlement to an increased rating for the service connected back disability, currently evaluated as 60 percent disabling. The veteran has since passed away. Consequently, his appeal was closed and the file was returned to the San Juan Regional Office.

91. VA Form 9 date: 2/13/89.

The original remand dated 7/19/91 ordered the RO to obtain a social work survey, a complete psychological exam, a neurological exam, and a psychiatric exam. Remand instructions were followed and a Rating Decision was effected in 1992. Subsequent BVA remands were issued on 4/25/94 and 12/28/00 because of new issues raised by the veteran and changes in the law. The current remand dated 1/26/05 requires the RO ensure VCAA compliance and obtain VA medical exams for peptic ulcer and skin conditions. These remand actions have been completed and an SSOC and Rating Decision, which granted one issue on appeal, were issued on 5/19/05. Following receipt of the VA Form 646, another SSOC was issued 7/27/05 and is pending reply or expiration of the 60-day diary.

92. VA Form 9 date: 1/26/90.

BVA remanded the pending appeal for the following issues: entitlement to an effective date earlier than 8/9/91 for the award of service connection; entitlement to a 100 percent evaluation for paranoid schizophrenia, to include the matter of claimed CUE in an April 1984 Rating Decision; entitlement to an effective date earlier than 8/9/91 for an award of IU; entitlement to service connection for sinusitis; and entitlement to an increased evaluation for asthma, currently evaluated as 30 percent disabling. CAVC denied the appeals for entitlement to an effective date earlier than 8/9/91 for the grant of service connection for paranoid schizophrenia and for entitlement to an effective date earlier than 8/9/91 for the award of IU. The remand directed that a VA examination be conducted on the remaining issues. The veteran is represented by a private attorney; therefore, the case was forwarded to the Cleveland RO for jurisdiction on 5/11/05. On 7/15/05, the RO sent the claims file to the BVA Appellate Litigation Staff for review, and the Designation of Record was completed 8/12/05 for CAVC. The diary date for return from the Appellate Litigation staff is 11/11/05.

93. VA Form 9 date: 1/27/90.

BVA originally denied the appeal on 6/17/91. Additional evidence was submitted in 1999 to reopen the claim, but BVA then denied the claim on the merits following a *de novo* review of the record. In a May 2001 order, the Court vacated BVA's March 1999 decision and remanded the matter back to BVA for readjudication in accordance with VCAA. On 3/29/05, CAVC denied one issue but remanded another, ordering VA to conduct a psychiatric exam which may be linked to service. An examination was completed 5/4/05, and an SSOC was issued 5/18/05. The appeal was recertified to BVA on 9/12/05.

94. VA Form 9 date: 5/19/88.

This case was remanded for a VA examination by a specialist, to include a claims file review. Since the original remand, the case was re-certified to BVA after obtaining and processing the requested remand information. On 1/31/89, BVA denied the single issue on appeal. In a memorandum dated 7/12/01, the veteran's representative filed a Motion for Reconsideration (indicated as received at BVA on 4/4/02). Motion for Reconsideration was granted on 11/12/02 and ordered on 2/11/03. The BVA remand dated 2/11/04 ordered VCAA notification and development for any additional evidence in support of the veteran's claim and a VA examination. A VCAA letter was sent to the veteran on 9/29/04. The veteran failed to report for VA examinations scheduled for 10/13/04. Rating Decision dated 12/1/04 was a complete grant of benefits sought on appeal based on *de novo* review, so the appeal is closed.

95. VA Form 9 date: 2/14/89.

The original remand dated 8/4/92 ordered additional development to include VA examination. Since the original remand, the case has been re-certified to BVA after obtaining and processing the requested remand information. BVA remanded the case to the RO on two other occasions on 1/29/97 and 1/26/98 for additional development. The case was remanded a fourth time on 1/20/99 at the veteran's request for scheduling of a personal hearing before a traveling member of BVA. BVA issued a decision on 9/10/99 but on 8/9/02 vacated that decision on all but one issue as it had mistakenly held a hearing on 6/11/99 with a different veteran who has the same name as the appellant. BVA held a hearing with the correct veteran on 6/20/03. BVA then remanded the case on 4/5/04 for additional development to include a request to the veteran to identify any recent treatment for his low back and for authorization to release private treatment records. BVA also ordered new VA examinations with review of claims file. The veteran was sent VCAA notification on 4/8/04. Additional evidence, to include the requested VA examinations was incorporated into an SSOC on 6/6/05, and the claims folder was forwarded to the veteran's representative for completion of VA Form 646. Based on that response, additional development to SSA was initiated on 8/24/05. Once received, a new decision will be made; a diary for follow up has been set for 60 days.

96. VA Form 9 date: 9/13/89.

BVA remanded the veteran's appeals for five issues on 4/12/05. Development of the relevant evidence was complicated, because the veteran resides in Germany and many documents needed to be translated into English, a 3/1/03 VA examination was missing from the file, and additional VCAA development was required. The AMC received the veteran's case from BVA on 4/19/05. However, the AMC transferred it to the RO on 5/9/05, because each of the remanded issues involved *Manlicon*. The veteran's case was transferred to San Juan on 6/16/05 based on jurisdiction of current address. A letter was sent to the veteran on 6/9/05 requesting legible, translated copies of previous medical evidence signed by a German physician dated 9/17/02 and 12/9/02 and a translated copy of a medical examination dated 3/1/03. An election letter was also sent on 6/9/05 for a new appeal, and third letter of the same date requested evidence supporting the veteran's claim for spousal aid and attendance and current income statements. The aid and attendance claim has been granted by a Rating Decision dated 8/24/05 and the veteran was notified by telephone on 9/1/05. He stated that he did not have the medical evidence requested in our letters dated 6/9/05, and he agreed to remain in Puerto Rico until after the VA examination ordered by the Remand. The VA examination was requested on 9/1/05.

97. VA Form 9 date: 2/12/90.

BVA has remanded the veteran's appeals for four issues multiple times because of an inability to obtain medical evidence or a negative reply from an Army medical center. From the beginning of the appeal, the veteran has maintained that he was treated at the Tripler Army Medical Center (TAMC) from December 1987 to January 1988 and that these records are relevant to his claim for service connection. In January 1999, a representative from TAMC reported that the veteran's records were at the Honolulu VA facility. In response to the RO's request, the VA medical facility in Honolulu reported that there were no TAMC records in the veteran's chart. In July 1999, VA made a second request for records to Schofield Barracks. In reply, Schofield Barracks indicated that a search for any mental health records there was negative. BVA determined that a follow up request should be made directly to TAMC in order to obtain the relevant records. Also, on a separate claim, BVA determined that an examination in

April 2003 was inadequate to rate the disability under the criteria for a compensable rating. Records were received from TAMC and VA examinations were completed at the outpatient treatment center in Manila in March and April 2005. The claims file was returned to AMC in August 2005, and as of 8/30/05, is pending review and decision by a RVSR.